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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 11, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 77, No. 220
Wednesday, November 14, 2012

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 890

RIN 3206–AM74

Federal Employees Health Benefits Program Coverage for Certain Intermittent Employees

AGENCY: Office of Personnel Management.

ACTION: Interim final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing an interim final rule to amend the Federal Employees Health Benefits Program (FEHBP) regulations to make certain employees who work on intermittent schedules eligible to be enrolled in a health benefits plan under the FEHBP. This rule is intended to allow agencies such as the Federal Emergency Management Agency (FEMA) to apply to OPM for authorization to offer FEHBP coverage to intermittent employees engaged in emergency response functions.

DATES: This rule is effective November 9, 2012. OPM must receive comments on or before January 14, 2013.

ADDRESSES: Send written comments to Michael W. Kaszynski, Senior Policy Analyst, Planning and Policy Analysis, U.S. Office of Personnel Management, Room 3415, 1900 E Street NW., Washington, DC; or FAX to (202) 606–4640 Attn: Michael Kaszynski. You may also submit comments using the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski at *Michael.Kaszynski@opm.gov* or (202) 606–0004.

SUPPLEMENTARY INFORMATION: On July 17, 2012, OPM issued an interim final regulation to extend eligibility for health insurance coverage under the Federal Employees Health Benefits program (FEHBP) to temporary firefighters and fire protection personnel. 77 FR 42417. In addition, in recognition of the fact that there may be other groups of employees not currently covered by the FEHB program because of the temporary nature of their appointments, the rule allowed agencies to request that OPM extend FEHB coverage to similarly situated temporary employees. We also solicited comments from the public regarding whether OPM should explicitly provide FEHBP coverage to employees who are appointed pursuant to Section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) (''Stafford Act'') to respond to major disasters and emergencies declared by the President. OPM is currently reviewing the comments it received in response to its interim final regulation.

In the meantime, a major natural disaster, Hurricane Sandy, struck the East Coast of the United States at the end of October. The storm resulted in loss of life and major destruction of property across a wide swath of the Eastern seaboard. In affected areas, 8.5 million people have gone without power, gasoline has been scarce, and massive flooding and cold temperatures have increased the hardship on those living in the storm's path. President Obama declared that major disasters had occurred in Connecticut, New York, New Jersey, and Rhode Island, making disaster assistance available to those in the areas heaviest hit by the storm. The President also signed federal emergency declarations for Connecticut, New York, New Jersey, New Hampshire, Massachusetts, Virginia, West Virginia, Maryland, Pennsylvania, Delaware, Rhode Island, and the District of Columbia.

Federal agencies, including the Federal Emergency Management Agency (FEMA), have worked and continue to work with state and local partners to respond to this emergency. Over 3,000 FEMA employees were immediately deployed to the hardest hit areas. These FEMA workers may be exposed to dangerous conditions, and put their health and safety at risk in order to assist those who have been affected by the storm. Because many of these FEMA employees work intermittent schedules within the meaning of 5 CFR 340.403, they are not eligible for FEHBP coverage under OPM's regulations, specifically 5 CFR 890.102(c)(3).

Pursuant to 5 U.S.C. 8913(b), OPM has broad authority to prescribe the conditions under which employees are eligible to enroll in the FEHB program. It is empowered to include or exclude employees on the basis of the nature and type of their employment or conditions pertaining to their appointments, ''such as short term appointment, seasonal or intermittent employment, and employment of like nature.'' *Id.* Intermittent emergency response employees often work in conditions that may expose them to various environmental hazards, similar to the wildland firefighters covered by the regulation described above. In light of the need for agencies to attract and bring emergency workers on board quickly and in recognition of the hazardous conditions those employees often face, OPM has concluded that its current policy of categorically excluding intermittent employees from FEHBP coverage is no longer in the public interest and should be changed. Therefore, OPM is issuing this interim regulation to allow agencies to request FEHBP coverage for intermittent employees engaged in emergency response and recovery work as defined by the Stafford Act. In addition, if OPM grants any such requests, it is reserving the authority to limit FEHBP coverage for intermittent employees only to the periods during which they are in a pay status. This would promote parity between intermittent employees and temporary employees like the wildland firefighters, who receive FEHBP coverage only when called up for duty. It would also allow OPM the discretion to craft an appropriate approach to health insurance coverage based on the potentially diverse work schedules of intermittent employees.

Waiver of Proposed Rulemaking

OPM is issuing this regulation as an interim final rule. Under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), an agency may issue a final rule without first publishing a general notice of proposed rulemaking when it determines, for good cause, that notice and public comment are impracticable, unnecessary, or contrary to the public

interest. We have determined that this standard is satisfied.

Hurricane Sandy left death and massive destruction in its wake. Many of the people in the storm's path continue to be exposed both to the elements (just as colder weather has arrived) and to inherently hazardous conditions where they are located and are thus in immediate need of emergency assistance. FEMA is playing a major role, working with state and local partners, to provide this assistance. Therefore, the federal government has a critical need to deploy additional qualified emergency response workers to serve the American people.

Moreover, emergency response workers are voluntarily exposing themselves to hazardous working conditions every day. They have a need for health insurance coverage to obtain preventive care, to allow for early detection of potentially serious conditions, and to address any health issues that may arise as a result of their service. The regulatory obstacle preventing such agencies as FEMA from submitting a request for FEHBP coverage of these men and women should thus be eliminated without delay.

Because of these conditions, OPM has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay putting the provisions of this interim final regulation in place until a public notice and comment process has been completed. We find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We will accept public comments on this interim final rule for 60 days.

We are also dispensing with the usual requirement that a new rule not take effect until 30 days after it is issued. Instead, this rule is effective immediately upon public display. Immediate effectiveness is authorized because this is a substantive rule granting an exception to the prohibition on providing health insurance coverage to intermittent employees. *See* 5 U.S.C. 553(d)(1). Moreover, for the reasons set forth above, there is good cause to make this rule effective immediately.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only adds additional groups to the list of groups eligible for coverage under FEHB.

Executive Orders 13563 and 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 13563 and 12866.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Parts 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Reporting and recordkeeping requirements, Retirement.

U.S. Office Of Personnel Management.

John Berry,

Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, Chapter I as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.301 also issued under sec. 311 of Pub. L. 111–03, 123 Stat. 64; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521; Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604; 5 U.S.C. 8913; Sec. 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061.

■ 2. Section 890.102 is amended by revising paragraph (i) to read as follows:

§ 890.102 Coverage.

* * * * *

(i) Notwithstanding paragraphs (c)(1) through (3) of this section, upon request by the employing agency, OPM may grant eligibility to employees performing similar types of emergency response services to enroll in a health benefits plan under this part. In granting eligibility requests, OPM may limit the coverage of intermittent employees under a health benefits plan to the periods of time during which they are in a pay status.

[FR Doc. 2012–27743 Filed 11–9–12; 4:15 pm]

BILLING CODE 6325–63–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

[Docket No. CFPB–2012–0041]

RIN 3170–AA06

Fair Credit Reporting (Regulation V); Correction

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Correcting amendments.

SUMMARY: Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Fair Credit Reporting Act (FCRA), as amended, the Bureau of Consumer Financial Protection (Bureau) published for public comment an interim final rule establishing a new Regulation V (Fair Credit Reporting) on December 21, 2011. This document corrects typographical and other technical errors in Appendices I, K, M, and N of the interim final rule, which contain model forms.

DATES: These corrections are effective November 14, 2012.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2011, the Bureau published in the **Federal Register** an interim final rule with request for public comment (76 FR 79307) establishing 12 CFR part 1022, Fair Credit Reporting (Regulation V), which implements the provisions of the FCRA for which the Bureau has rulemaking authority pursuant to the Dodd-Frank Act. The interim final rule includes, among other things, model forms in Appendices I (Summary of Consumer Identity Theft Rights), K (Summary of Consumer Rights), M (Notice of Furnisher Responsibilities), and N (Notice of User Responsibilities). As discussed in the **SUPPLEMENTARY INFORMATION** to the interim final rule, Appendices I, K, M, and N of the interim final rule were intended to substantially duplicate the Federal Trade Commission's (FTC's) Appendices E, F, G, and H to 16 CFR part 698, respectively, with only certain non-substantive, technical, formatting, and stylistic changes. The model forms in Appendices I, K, M, and N to the Bureau's interim final rule contain several typographical or other technical errors. This document corrects those errors and more closely conforms the

formatting of the Bureau's Appendices to those of the FTC.

Among the corrections are the following: Appendix I contained several erroneous references to the FTC and its Web site, which have been updated in this document to refer to the Bureau and its Web site. The addresses in Appendix K for contacting the Assistant General Counsel for Aviation Enforcement and Proceedings and the Surface Transportation Board have been updated. Typographical errors in the Spanish language translation at the top of Appendices I and K have also been corrected. Appendices M and N have been updated to reflect the promulgation of guidelines and regulations addressing certain obligations of furnishers and users of consumer reports.

To mitigate the impact of these changes on users of the model forms in the Bureau's Appendices I, K, M, and N published December 21, 2011, the Bureau will regard the use of those model forms to constitute compliance with the FCRA provisions requiring such forms and will regard those forms to be substantially similar to the corrected forms published today, until further notice. The Bureau anticipates providing that further, notice along with ample time to allow for the orderly discontinuation of the December 21, 2011 model forms, when it issues a final rule to restate Regulation V in 2013.

II. Basis for the Corrections

In issuing the Bureau's Regulation V as an interim final rule, the Bureau found good cause to conclude that providing notice and opportunity for comment was unnecessary and contrary to the public interest. *See* 76 FR 79308, 79310 (Dec. 21, 2011). The Bureau also finds that there is good cause to publish these corrections without seeking public comment. *See* 5 U.S.C. 553(b)(B). Public comment is unnecessary because the Bureau is correcting inadvertent, technical errors about which there is minimal, if any, basis for substantive disagreement.

The Bureau also finds good cause to dispense with a 30-day delay of effective date. *See* 5 U.S.C. 553(d). The Bureau believes that a delay is unnecessary and contrary to the public interest because the Bureau is merely making technical corrections to existing model forms. The Bureau will continue to regard the use of the model forms in the Bureau's Appendices I, K, M, and N published December 21, 2011, to constitute compliance with the FCRA provisions requiring such forms and will regard those forms to be substantially similar to the corrected forms published today, until further notice.

List of Subjects in 12 CFR Part 1022

Banks, Banking, Consumer protection, Credit unions, Fair Credit Reporting Act, Holding companies, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, State member banks.

Accordingly, 12 CFR part 1022 is amended by making the following corrections:

PART 1022—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1681a, 1681b, 1681c, 1681c–1, 1681e, 1681g, 1681i, 1681j, 1681m, 1681s, 1681s–2, 1681s–3, and 1681t; Sec. 214, Public Law 108–159, 117 Stat. 1952.

■ 2. Revise Appendix I to read as follows:

Appendix I to Part 1022—Summary of Consumer Identity Theft Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. A summary should accurately reflect changes to those items that may change over time (such as telephone numbers) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

BILLING CODE 4810–AM–P

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

Remedying the Effects of Identity Theft

You are receiving this information because you have notified a consumer reporting agency that you believe that you are a victim of identity theft. Identity theft occurs when someone uses your name, Social Security number, date of birth, or other identifying information, without authority, to commit fraud. For example, someone may have committed identity theft by using your personal information to open a credit card account or get a loan in your name. For more information, visit www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

The Fair Credit Reporting Act (FCRA) gives you specific rights when you are, or believe that you are, the victim of identity theft. Here is a brief summary of the rights designed to help you recover from identity theft.

1. **You have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file to let potential creditors and others know that you may be a victim of identity theft.** A fraud alert can make it more difficult for someone to get credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling just one of the three nationwide consumer reporting agencies. As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file.

   - Equifax: 1-800-XXX-XXXX; www.equifax.com
   - Experian: 1-800-XXX-XXXX; www.experian.com
   - TransUnion: 1-800-XXX-XXXX; www.transunion.com

   An initial fraud alert stays in your file for at least 90 days. An extended alert stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.consumerfinance.gov/learnmore.

2. **You have the right to free copies of the information in your file (your "file disclosure").** An initial fraud alert entitles you to a copy of all the information in your file at each of the three nationwide agencies, and an extended alert entitles you to two free file disclosures in a 12-month period following the placing of the alert. These additional disclosures may help you detect signs of fraud, for example, whether fraudulent accounts have been opened in your name or whether someone has reported a change in your address. Once a year, you also have the right to a free copy of the information in your file at any consumer reporting agency, if you believe it has inaccurate information due to fraud, such as identity theft. You also

have the ability to obtain additional free file disclosures under other provisions of the FCRA. See www.consumerfinance.gov/learnmore.

3. **You have the right to obtain documents relating to fraudulent transactions made or accounts opened using your personal information.** A creditor or other business must give you copies of applications and other business records relating to transactions and accounts that resulted from the theft of your identity, if you ask for them in writing. A business may ask you for proof of your identity, a police report, and an affidavit before giving you the documents. It may also specify an address for you to send your request. Under certain circumstances, a business can refuse to provide you with these documents. See www.consumerfinance.gov/learnmore.

4. **You have the right to obtain information from a debt collector.** If you ask, a debt collector must provide you with certain information about the debt you believe was incurred in your name by an identity thief – like the name of the creditor and the amount of the debt.

5. **If you believe information in your file results from identity theft, you have the right to ask that a consumer reporting agency block that information from your file.** An identity thief may run up bills in your name and not pay them. Information about the unpaid bills may appear on your consumer report. Should you decide to ask a consumer reporting agency to block the reporting of this information, you must identify the information to block, and provide the consumer reporting agency with proof of your identity and a copy of your identity theft report. The consumer reporting agency can refuse or cancel your request for a block if, for example, you don't provide the necessary documentation, or where the block results from an error or a material misrepresentation of fact made by you. If the agency declines or rescinds the block, it must notify you. Once a debt resulting from identity theft has been blocked, a person or business with notice of the block may not sell, transfer, or place the debt for collection.

6. **You also may prevent businesses from reporting information about you to consumer reporting agencies if you believe the information is a result of identity theft.** To do so, you must send your request to the address specified by the business that reports the information to the consumer reporting agency. The business will expect you to identify what information you do not want reported and to provide an identity theft report.

To learn more about identity theft and how to deal with its consequences, visit www.consumerfinance.gov/learnmore, or write to the Consumer Financial Protection Bureau. You may have additional rights under state law. For more information, contact your local consumer protection agency or your state Attorney General.

In addition to the new rights and procedures to help consumers deal with the effects of identity theft, the FCRA has many other important consumer protections. They are described in more detail at www.consumerfinance.gov/learnmore.

■ 3. Revise Appendix K to read as follows:

Appendix K to Part 1022—Summary of Consumer Rights

The prescribed form for this summary is a disclosure that is substantially similar to the Bureau's model summary with all information clearly and prominently displayed. The list of Federal regulators that is included in the Bureau's prescribed summary may be provided separately so long as this is done in a clear and conspicuous way. A summary should accurately reflect changes to those items that may change over time (e.g., dollar amounts, or telephone numbers and addresses of Federal agencies) to remain in compliance. Translations of this summary will be in compliance with the Bureau's prescribed model, provided that the translation is accurate and that it is provided in a language used by the recipient consumer.

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete, or unverifiable information must be removed or corrected, usually within 30 days. However , a consumer reporting agency may continue to report information it has verified as accurate.

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.

- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.

- **You many limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-800-XXX-XXXX.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over $10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G Street, N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above:	
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
d. Federal Credit Unions	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590
4. Creditors Subject to the Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423
5. Creditors Subject to the Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

■ 4. Revise Appendix M to read as follows:

Appendix M to Part 1022—Notice of Furnisher Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's model notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the furnisher that will receive the notice.

All furnishers of information to consumer reporting agencies must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO FURNISHERS OF INFORMATION: OBLIGATIONS OF FURNISHERS UNDER THE FCRA

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA, 15 U.S.C 1681s-2. State law may impose additional requirements on furnishers. All furnishers of information to CRAs should become familiar with the applicable laws and may want to consult with their counsel to ensure that they are in compliance. The text of the FCRA is available at the website of the Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov/learnmore. A list of the sections of the FCRA cross-referenced to the U.S Code is at the end of this document.

Section 623 imposes the following duties upon furnishers:

Accuracy Guidelines

The FCRA requires furnishers to comply with federal guidelines and regulations dealing with the accuracy of information provided to CRAs by furnishers. Federal regulations and guidelines are available at www.consumerfinance.gov/learnmore. Section 623(e).

General Prohibition on Reporting Inaccurate Information

The FCRA prohibits information furnishers from providing information to a CRA that they know or have reasonable cause to believe is inaccurate. However, the furnisher is not subject to this general prohibition if it clearly and conspicuously specifies an address to which consumers may write to notify the furnisher that certain information is inaccurate. Sections 623(a)(1)(A) and (a)(1)(C).

Duty to Correct and Update Information

If at any time a person who regularly and in the ordinary course of business furnishes information to one or more CRAs determines that the information provided is not complete or accurate, the furnisher must promptly provide complete and accurate information to the CRA. In addition, the furnisher must notify all CRAs that received the information of any corrections, and must thereafter report only the complete and accurate information. Section 623(a)(2).

Duties After Notice of Dispute from Consumer

If a consumer notifies a furnisher, at an address specified for the furnisher for such notices, that specific information is inaccurate, and the information is, in fact, inaccurate, the furnisher must thereafter report the correct information to CRAs. Section 623(a)(1)(B).

If a consumer notifies a furnisher that the consumer disputes the completeness or accuracy of any information reported by the furnisher, the furnisher may not subsequently report that information to a CRA without providing notice of the dispute. Section 623(a)(3).

Furnishers must comply with federal regulations that identify when an information furnisher must investigate a dispute made directly to the furnisher by a consumer. Under these regulations, furnishers must complete an investigation within 30 days (or 45 days, if the consumer later provides relevant additional information) unless the dispute is frivolous or irrelevant or comes from a "credit repair organization." Section 623(a)(8). Federal regulations are available at www.consumerfinance.gov/learnmore. Section 623(a)(8)

Duties After Notice of Dispute from Consumer Reporting Agency

If a CRA notifies a furnisher that a consumer disputes the completeness or accuracy of information provided by the furnisher, the furnisher has a duty to follow certain procedures. The furnisher must:

- Conduct an investigation and review all relevant information provided by the CRA, including information given to the CRA by the consumer. Sections 623(b)(1)(A) and (b)(1)(B).
- Report the results to the CRA that referred the dispute, and, if the investigation establishes that the information was, in fact, incomplete or inaccurate, report the results to all CRAs to which the furnisher provided the information that compile and maintain files on a nationwide basis. Section 623(b)(1)(C) and (b)(1)(D).
- Complete the above steps within 30 days from the date the CRA receives the dispute (or 45 days, if the consumer later provides relevant additional information to the CRA). Section 623(b)(2).
- Promptly modify or delete the information, or block its reporting. Section 623(b)(1)(E).

Duty to Report Voluntary Closing of Credit Accounts

If a consumer voluntarily closes a credit account, any person who regularly and in the ordinary course of business furnished information to one or more CRAs must report this fact when it provides information to CRAs for the time period in which the account was closed. Section 623(a)(4).

Duty to Report Dates of Delinquencies

If a furnisher reports information concerning a delinquent account placed for collection, charged to profit or loss, or subject to any similar action, the furnisher must, within 90 days after reporting the information, provide the CRA with the month and the year of the commencement of the delinquency that immediately preceded the action, so that the agency will know how long to keep the information in the consumer's file. Section 623(a)(5).

Any person, such as a debt collector, that has acquired or is responsible for collecting delinquent accounts and that reports information to CRAs may comply with the requirements of Section 623(a)(5) (until there is a consumer dispute) by reporting the same delinquency date previously reported by the creditor. If the creditor did not report this date, they may comply with the FCRA by establishing reasonable procedures to obtain and report delinquency dates, or, if a delinquency date cannot be reasonably obtained, by following reasonable procedures to ensure that the date reported precedes the date when the account was placed for collection, charged to profit or loss, or subjected to any similar action. Section 623(a)(5).

Duties of Financial Institutions When Reporting Negative Information

Financial institutions that furnish information to "nationwide" consumer reporting agencies, as defined in Section 603(p), must notify consumers in writing if they may furnish or have furnished negative information to a CRA. Section 623(a)(7). The CFPB has prescribed model disclosures, 12 CFR Part 1022, App. B.

Duties When Furnishing Medical Information

A furnisher whose primary business is providing medical services, products, or devices (and such furnisher's agents or assignees) is a medical information furnisher for the purposes of the FCRA and must notify all CRAs to which it reports of this fact. Section 623(a)(9). This notice will enable CRAs to comply with their duties under Section 604(g) when reporting medical information.

Duties When ID Theft Occurs

All furnishers must have in place reasonable procedures to respond to notifications from CRAs that information furnished is the result of identity theft, and to prevent refurnishing the information in the future. A furnisher may not furnish information that a consumer has identified as resulting from identity theft unless the furnisher subsequently knows or is informed by the consumer that the information is correct. Section 623 (a)(6). If a furnisher learns that it has furnished inaccurate information due to identity theft, it must notify each CRA of the correct information and must thereafter report only complete and accurate information. Section 623(a)(2). When any furnisher of information is notified pursuant to the procedures set forth in Section 605B that a debt has resulted from identity theft, the furnisher many not sell, transfer, or place for collection the debt except in certain limited circumstances. Section 615(f).

The CFPB's website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

■ 5. Revise Appendix N to read as follows:

Appendix N to Part 1022—Notice of User Responsibilities

The prescribed form for this disclosure is a separate document that is substantially similar to the Bureau's notice with all information clearly and prominently displayed. Consumer reporting agencies may limit the disclosure to only those items that they know are relevant to the user that will receive the notice.

All users of consumer reports must comply with all applicable regulations. Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website, www.consumerfinance.gov/learnmore.

NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA

The Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. The text of the FCRA is set forth in full at the Consumer Financial Protection Bureau's (CFPB) website at www.consumerfinance.gov/learnmore. At the end of this document is a list of United States Code citations for the FCRA. Other information about user duties is also available at the CFPB's website. **Users must consult the relevant provisions of the FCRA for details about their obligations under the FCRA.**

The first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. If you are a furnisher of information to a consumer reporting agency (CRA), you have additional obligations and will receive a separate notice from the CRA describing your duties as a furnisher.

I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS

A. Users Must Have a Permissible Purpose

Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 contains a list of the permissible purposes under the law. These are:

- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
- As instructed by the consumer in writing. Section 604(a)((2)
- For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
- For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)

- For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)

- When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)

- To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)

- To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)

- For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)

- For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making "prescreened" unsolicited offers of credit or insurance. Section 604(c). The particular obligations of users of "prescreened" information are described in Section VII below.

B. Users Must Provide Certifications

Section 604(f) prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.

C. Users Must Notify Consumers When Adverse Actions Are Taken

The term "adverse action" is defined very broadly by Section 603. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact as defined by Section 603(k) of the FCRA – such as denying or canceling credit or insurance, or denying employment or promotion. No adverse action occurs in a credit transaction where the creditor makes a counteroffer that is accepted by the consumer.

1. Adverse Actions Based on Information Obtained From a CRA

If a user takes any type of adverse action as defined by the FCRA that is based at least in part on information contained in a consumer report, Section 615(a) requires the user to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:

- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
- A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
- A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer makes a request within 60 days.
- A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

2. Adverse Actions Based on Information Obtained From Third Parties Who Are Not Consumer Reporting Agencies

If a person denies (or increases the charge for) credit for personal, family, or household purposes based either wholly or partly upon information from a person other than a CRA, and the information is the type of consumer information covered by the FCRA, Section 615(b)(1) requires that the user clearly and accurately disclose to the consumer his or her right to be told the nature of the information that was relied upon if the consumer makes a written request within 60 days of notification. The user must provide the disclosure within a reasonable period of time following the consumer's written request.

3. Adverse Actions Based on Information Obtained From Affiliates

If a person takes an adverse action involving insurance, employment, or a credit transaction initiated by the consumer, based on information of the type covered by the FCRA, and this information was obtained from an entity affiliated with the user of the information by common ownership or control, Section 615(b)(2) requires the user to notify the consumer of the adverse action. The notice must inform the consumer that he or she may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of receiving the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request. If consumer report information is shared among affiliates and then used for an adverse action, the user must make an adverse action disclosure as set forth in I.C.1 above.

D. Users Have Obligations When Fraud and Active Duty Military Alerts are in Files

When a consumer has placed a fraud alert, including one relating to identity theft, or an active duty military alert with a nationwide consumer reporting agency as defined in Section 603(p) and resellers, Section 605A(h) imposes limitations on users of reports obtained from the consumer reporting agency in certain circumstances, including the establishment of a new credit plan and the issuance of additional credit cards. For initial fraud alerts and active duty alerts, the user must have reasonable policies and procedures in place to form a belief that the user knows the identity of the applicant or contact the consumer at a telephone number specified by the consumer; in the case of extended fraud alerts, the user must contact the consumer in accordance with the contact information provided in the consumer's alert.

E. Users Have Obligations When Notified of an Address Discrepancy

Section 605(h) requires nationwide CRAs, as defined in Section 603(p), to notify users that request reports when the address for a consumer provided by the user in requesting the report is substantially different from the addresses in the consumer's file. When this occurs, users must comply with regulations specifying the procedures to be followed. Federal regulations are available at www.consumerfinance.gov/learnmore.

F. Users Have Obligations When Disposing of Records

Section 628 requires that all users of consumer report information have in place procedures to properly dispose of records containing this information. Federal regulations have been issued that cover disposal.

II. CREDITORS MUST MAKE ADDITIONAL DISCLOSURES

If a person uses a consumer report in connection with an application for, or a grant, extension, or provision of, credit to a consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person must provide a risk-based pricing notice to the consumer in accordance with regulations prescribed by the CFPB.

Section 609(g) requires a disclosure by all persons that make or arrange loans secured by residential real property (one to four units) and that use credit scores. These persons must

provide credit scores and other information about credit scores to applicants, including the disclosure set forth in Section 609(g)(1)(D) ("Notice to the Home Loan Applicant").

III. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES

A. Employment Other Than in the Trucking Industry

If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain from the consumer prior written authorization. Authorization to access reports during the term of employment may be obtained at the time of employment.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- **Before** taking an adverse action, the user must provide a copy of the report to the consumer as well as the summary of consumer's rights. (The user should receive this summary from the CRA.) A Section 615(a) adverse action notice should be sent after the adverse action is taken.

An adverse action notice also is required in employment situations if credit information (other than transactions and experience data) obtained from an affiliate is used to deny employment. Section 615(b)(2)

The procedures for investigative consumer reports and employee misconduct investigations are set forth below.

B. Employment in the Trucking Industry

Special rules apply for truck drivers where the only interaction between the consumer and the potential employer is by mail, telephone, or computer. In this case, the consumer may provide consent orally or electronically, and an adverse action may be made orally, in writing, or electronically. The consumer may obtain a copy of any report relied upon by the trucking

company by contacting the company.

IV. OBLIGATIONS WHEN INVESTIGATIVE CONSUMER REPORTS ARE USED

Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by an entity or person that is a consumer reporting agency. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer at some time before or not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and the summary of consumer rights required by Section 609 of the FCRA. (The summary of consumer rights will be provided by the CRA that conducts the investigation.)

- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.

- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

V. SPECIAL PROCEDURES FOR EMPLOYEE INVESTIGATIONS

Section 603(x) provides special procedures for investigations of suspected misconduct by an employee or for compliance with Federal, state or local laws and regulations or the rules of a self-regulatory organization, and compliance with written policies of the employer. These investigations are not treated as consumer reports so long as the employer or its agent complies with the procedures set forth in Section 603(x), and a summary describing the nature and scope of the inquiry is made to the employee if an adverse action is taken based on the investigation.

VI. OBLIGATIONS OF USERS OF MEDICAL INFORMATION

Section 604(g) limits the use of medical information obtained from consumer reporting agencies (other than payment information that appears in a coded form that does not identify the

medical provider). If the information is to be used for an insurance transaction, the consumer must give consent to the user of the report or the information must be coded. If the report is to be used for employment purposes – or in connection with a credit transaction (except as provided in federal regulations) – the consumer must provide specific written consent and the medical information must be relevant. Any user who receives medical information shall not disclose the information to any other person (except where necessary to carry out the purpose for which the information was disclosed, or as permitted by statute, regulation, or order).

VII. OBLIGATIONS OF USERS OF "PRESCREENED" LISTS

The FCRA permits creditors and insurers to obtain limited consumer report information for use in connection with unsolicited offers of credit or insurance under certain circumstances. Sections 603(1), 604(c), 604(e), and 615(d). This practice is known as "prescreening" and typically involves obtaining from a CRA a list of consumers who meet certain preestablished criteria. If any person intends to use prescreened lists, that person must (1) before the offer is made, establish the criteria that will be relied upon to make the offer and to grant credit or insurance, and (2) maintain such criteria on file for a three-year period beginning on the date on which the offer is made to each consumer. In addition, any user must provide with each written solicitation a clear and conspicuous statement that:

- Information contained in a consumer's CRA file was used in connection with the transaction.
- The consumer received the offer because he or she satisfied the criteria for credit worthiness or insurability used to screen for the offer.
- Credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on credit worthiness or insurability, or the consumer does not furnish required collateral.
- The consumer may prohibit the use of information in his or her file in connection with future prescreened offers of credit or insurance by contacting the notification system established by the CRA that provided the report. The statement must include the address and toll-free telephone number of the appropriate notification system.

In addition, the CFPB has established the format, type size, and manner of the disclosure required by Section 615(d), with which users must comply. The relevant regulation is 12 CFR 1022.54.

VIII. OBLIGATIONS OF RESELLERS

A. Disclosure and Certification Requirements

Section 607(e) requires any person who obtains a consumer report for resale to take the following steps:

- Disclose the identity of the end-user to the source CRA.
- Identify to the source CRA each permissible purpose for which the report will be furnished to the end-user.
- Establish and follow reasonable procedures to ensure that reports are resold only for permissible purposes, including procedures to obtain:
  (1) the identity of all end-users;
  (2) certifications from all users of each purpose for which reports will be used; and
  (3) certifications that reports will not be used for any purpose other than the purpose(s) specified to the reseller. Resellers must make reasonable efforts to verify this information before selling the report.

B. Reinvestigations by Resellers

Under Section 611(f), if a consumer disputes the accuracy or completeness of information in a report prepared by a reseller, the reseller must determine whether this is a result of an action or omission on its part and, if so, correct or delete the information. If not, the reseller must send the dispute to the source CRA for reinvestigation. When any CRA notifies the reseller of the results of an investigation, the reseller must immediately convey the information to the consumer.

C. Fraud Alerts and Resellers

Section 605A(f) requires resellers who receive fraud alerts or active duty alerts from another consumer reporting agency to include these in their reports.

IX. LIABILITY FOR VIOLATIONS OF THE FCRA

Failure to comply with the FCRA can result in state government or federal government enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

The CFPB's website, www.consumerfinance.gov/learnmore, has more information about the FCRA, including publications for businesses and the full text of the FCRA.

Citations for FCRA sections in the U.S. Code, 15 U.S.C. § 1681 et seq.:

Section 602	15 U.S.C. 1681	Section 615	15 U.S.C. 1681m
Section 603	15 U.S.C. 1681a	Section 616	15 U.S.C. 1681n
Section 604	15 U.S.C. 1681b	Section 617	15 U.S.C. 1681o
Section 605	15 U.S.C. 1681c	Section 618	15 U.S.C. 1681p
Section 605A	15 U.S.C. 1681cA	Section 619	15 U.S.C. 1681q
Section 605B	15 U.S.C. 1681cB	Section 620	15 U.S.C. 1681r
Section 606	15 U.S.C. 1681d	Section 621	15 U.S.C. 1681s
Section 607	15 U.S.C. 1681e	Section 622	15 U.S.C. 1681s-1
Section 608	15 U.S.C. 1681f	Section 623	15 U.S.C. 1681s-2
Section 609	15 U.S.C. 1681g	Section 624	15 U.S.C. 1681t
Section 610	15 U.S.C. 1681h	Section 625	15 U.S.C. 1681u
Section 611	15 U.S.C. 1681i	Section 626	15 U.S.C. 1681v
Section 612	15 U.S.C. 1681j	Section 627	15 U.S.C. 1681w
Section 613	15 U.S.C. 1681k	Section 628	15 U.S.C. 1681x
Section 614	15 U.S.C. 1681l	Section 629	15 U.S.C. 1681y

Dated: October 31, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–27581 Filed 11–13–12; 8:45 am]

BILLING CODE 4810–AM–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0546; Directorate Identifier 2012–NE–15–AD; Amendment 39–17253; AD 2012–22–16]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pratt & Whitney Division PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix. This AD was prompted by 16 reports of damaged or failed 3rd stage low-pressure turbine (LPT) duct segments. This AD requires removing from service certain part numbers (P/Ns) of 3rd stage LPT duct segments. We are issuing this AD to prevent failure of the 3rd stage LPT duct segments, which could lead to LPT rotor damage, uncontained engine failure, and damage to the airplane.

DATES: This AD is effective December 19, 2012.

ADDRESSES: For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on July 11, 2012 (77 FR 40822). That NPRM proposed to require removal from service of 3rd stage LPT duct segments P/Ns 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; and 50N495–001, at the next piece-part exposure after the effective date of the proposed AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Agreement With the Proposed AD

One commenter, Boeing, agreed with the intent of the proposed AD.

Request To Reference Pratt & Whitney Service Bulletin PW4ENG 72–488

One commenter, FedEx Express, requested that we add a reference to Pratt & Whitney Service Bulletin PW4ENG 72–488 for a list of the engine serial numbers affected. We assume this request was made to add clarity.

We do not agree. The AD applicability is for PW4000 engines with certain P/N 3rd stage LPT duct segments installed. Although the Pratt & Whitney Service Bulletin does list engine serial numbers, it is not necessary to include this information in the AD. We did not change the AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 151 engines installed on airplanes of U.S. registry. We estimate that no additional labor costs will be incurred to perform the required work as the work is done when the 3rd stage LPT duct segments are at piece-part exposure. The average labor rate is $85 per work-hour. Required parts will cost about $44,441 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators will be $6,710,591.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–22–16 Pratt & Whitney Division: Amendment 39–17253 ; Docket No. FAA–2012–0546; Directorate Identifier 2012–NE–15–AD.

(a) Effective Date

This AD is effective December 19, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Division PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4062A, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines, including models with any dash number suffix, with 3rd stage low-pressure turbine (LPT) duct segments part numbers (P/Ns) 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; or 50N495–001, installed.

(d) Unsafe Condition

This AD was prompted by 16 reports of damaged or failed 3rd stage LPT duct segments. We are issuing this AD to prevent failure of the 3rd stage LPT duct segments, which could lead to LPT rotor damage, uncontained engine failure, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(f) 3rd Stage LPT Duct Segments Removal from Service

At the next piece-part exposure after the effective date of this AD, remove from service 3rd stage LPT duct segments, P/Ns 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; and 50N495–001.

(g) Installation Prohibition

After the effective date of this AD, do not install into any engine any 3rd stage LPT duct segment, P/N 50N095; 50N095–001; 50N235; 50N235–001; 50N494–01; 50N494–001; 50N495–01; or 50N495–001, that is at piece-part exposure.

(h) Definition

For the purpose of this AD, piece-part exposure is when the 3rd stage LPT duct segment is removed from the engine and completely disassembled.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(j) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) Pratt & Whitney Engine-Duct Segment, Third Stage LPT Assembly Service Bulletin No. PW4ENG 72–488 is related to this AD.

(3) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(k) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on October 29, 2012.

Colleen M. D'Allessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–27168 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1181; Directorate Identifier 2003–CE–030–AD; Amendment 39–17249; AD 2003–17–03 R1]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing airworthiness directive (AD) for certain Piaggio Aero Industries S.p.A. Model P–180 airplanes. That AD currently requires replacement of any firewall shutoff or crossfeed valve with a serial number in a certain range even if it has been previously modified. The way the applicability was written includes valves that should not be affected and are not included in the referenced service information. This AD requires

the same actions as the current AD, but only affects those firewall shutoff valves referenced in the referenced service information. We are issuing this AD to clarify the affected parts required to correct the unsafe condition on these products.

DATES: This AD is effective November 14, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 3, 2003 (68 FR 50693, August 22, 2003).

We must receive any comments on this AD by December 31, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Piaggio Aero Industries S.p.A—Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it*; Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On August 12, 2003, we issued AD 2003–17–03, amendment 39–13277 (68 FR 50693, August 22, 2003), for certain Piaggio Aero Industries S.p.A. Model P–180 airplanes. That AD requires inspection and determination of whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires replacement or modifications of any valve that has a serial number within this range. This AD allows the pilot to check the logbook and does not require the inspection and replacement requirement if the check shows that one of these valves is definitely not installed.

That AD resulted from a ground fire on the left-hand engine nacelle of one of the affected airplanes caused by a cracked firewall crossfeed valve that had leaked fuel. This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations. The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, issued Italian RAI–AD 2003–119, dated April 3, 2003, in order to ensure the continued airworthiness of these airplanes in Italy.

We issued that AD to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel, which could result in an engine fire.

Actions Since AD Was Issued

Since we issued AD 2003–17–03 (68 FR 50693, August 22, 2003), we learned that the way the applicability was written includes valves that should not be affected and are not included in PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80–0191, dated February 27, 2003.

Relevant Service Information

We reviewed PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003. The service information describes procedures for replacing/modifying the firewall and crossfeed valves.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires the same actions as AD 2003–17–03 (68 FR 50693, August 22, 2003), but only affects those firewall shutoff and crossfeed valves referenced in PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the current AD includes firewall shutoff and crossfeed valves that should not be affected by the required actions. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–1181 and directorate identifier 2003–CE–030–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 102 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Determination/Inspection	.5 work-hours × $85 per hour = $42.50.	N/A	$42.50	$4,335

We estimate the following costs to do any necessary replacements/modifications that would be required based on the results of the determination. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of affected firewall shutoff and crossfeed valves.	29 work-hours × $85 per hour = $2,465.	$4,482	$6,947

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–17–03, Amendment 39–13277 (68 FR 50693, August 22, 2003), and adding the following new AD:

2003–17–03 R1 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–17249; Docket No. FAA–2012–1181; Directorate Identifier 2003–CE–030–AD.

(a) Effective Date

This AD is effective November 14, 2012.

(b) Affected ADs

This AD revises AD 2003–17–03, Amendment 39–13277 (68 FR 50693, August 22, 2003).

(c) Applicability

(1) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model P–180 airplanes, all serial numbers, that are:

(i) certificated in any category; and

(ii) equipped with a firewall shutoff or crossfeed valve that is identified in the Effectivity table of PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003.

(2) The only difference between the applicability of this AD and AD 2003–17–03 (68 FR 50693, August 22, 2003), is that AD 2003–17–03 applied to firewall shutoff and crossfeed valves that should not have been included.

(i) No further action is necessary if the actions of this AD were done in compliance with AD 2003–17–03, Amendment 39–13277 (68 FR 50693, August 22, 2003).

(ii) Any firewall shutoff or crossfeed valve that was modified per AD 2003–17–03 (68 FR 50693, August 22, 2003), and re-identified with an ''A'' at the end of the serial number and is not identified in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003, is an airworthy part and is not affected by this AD.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28: Fuel.

(e) Unsafe Condition

This AD was prompted by a report of a ground fire on the left-hand engine nacelle of one of the affected airplanes caused by a cracked firewall crossfeed valve that had leaked fuel. We are issuing this AD to clarify the affected parts required to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Records Check

(1) Within 5 days after September 3, 2003 (the effective date of AD 2003–17–03 (68 FR 50693, August 22, 2003)), check the maintenance records to determine whether a firewall shutoff or crossfeed valve that is affected by this AD is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.

(2) If, by checking the maintenance records, the owner/operator can definitely

show that no affected firewall shutoff or crossfeed valve is installed, then the inspection requirement of paragraph (h) of this AD and the replacement requirement of paragraph (i) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(h) Inspection

Within 5 days after September 3, 2003 (the effective date of AD 2003–17–03 (68 FR 50693, August 22, 2003)), inspect the three firewall shutoff and crossfeed valves to determine whether they incorporate a serial number as referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003.

(i) Replacement/Modification

If any of the firewall shutoff or crossfeed valves that are referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003, are found, before further flight, replace or modify each affected valve following PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003.

(j) Spares

As of 5 days after September 3, 2003 (the effective date of AD 2003–17–03 (68 FR 50693, August 22, 2003)), do not install, on any airplane, a firewall shutoff or crossfeed valve that is referenced in the Effectivity table of PIAGGIO Aero Industries S.p.A. SB No. ASB80–0191, dated February 27, 2003, unless it has been modified per paragraph (i) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 3, 2003 (68 FR 50693, August 22, 2003):

(i) PIAGGIO Aero Industries S.p.A. Service Bulletin (SB) No. ASB80–0191, dated February 27, 2003; and

(ii) Electromech Technologies SB 484–3 AB, dated February 18, 2003.

(4) For service information identified in this AD, contact Piaggio Aero Industries S.p.A–Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it*; Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support*.

(5) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on October 31, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27051 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–1078; FRL–9751–3]

Revision to the South Coast Portion of the California State Implementation Plan, CPV Sentinel Energy Project AB 1318 Tracking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a source-specific State Implementation Plan (SIP) revision for the South Coast Air Quality Management District (''SCAQMD'' or ''District'') portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System (''AB 1318 Tracking System''). The SIP revision consists of enabling language and the AB 1318 Tracking System to revise the District's SIP approved new source review (NSR) program. The SIP revision allows the District to transfer offsetting emission reductions for particulate matter less than 10 microns in diameter (PM_{10}) and one of its precursors, sulfur oxides (SO_X), to the CPV Sentinel Energy Project (''Sentinel''), which will be a natural gas fired power plant.

DATES: This final rule is effective on November 14, 2012.

ADDRESSES: The index to the docket for this final action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While generally all categories of documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., voluminous documents, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3524, *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' refer to EPA.

Table of Contents

I. Background

A. The Facility and Prior Actions

The Sentinel Energy Project is designed to be a nominally rated 850 megawatt, natural gas-fired electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Desert Hot Springs in the Palm Springs, California area. EPA's **Federal Register** notices for the January 13, 2011 proposal (76 FR 2294), April 20, 2011 final action (76 FR 22038), and August 23, 2012 supplemental proposal for this action (77 FR 50973) contain a detailed description of the project and the Clean Air Act's (CAA) requirements for offsets during new source review permitting.

In response to our January 13, 2011 proposed rule, we received four comments. We responded to those comments on April 20, 2011 (76 FR 22038). One commenter, jointly California Communities Against Toxics and Communities for a Better Environment (jointly ''CCAT'') filed a Petition for judicial review in the United States Court of Appeals for the Ninth Circuit (''9th Circuit'') shortly thereafter and an Opening Brief on July 26, 2011. On September 14, 2011, EPA requested the 9th Circuit to remand the

final rule to us to correct minor errors and revise our reasoning on one issue. Motion for a Voluntary Remand of the Record, to Vacate the Briefing Schedule, and to Stay the Proceedings During Remand, Case No. 11–71127 (Sept. 14, 2011). CCAT opposed EPA's motion for voluntary remand. The 9th Circuit Appellate Commissioner denied EPA's motion for voluntary remand on November 7, 2011, and ordered briefing. After briefing and oral argument, the 9th Circuit remanded the final rule (without vacatur) to EPA on July 26, 2012. *California Communities Against Toxics* v. *EPA,* 688 F.3d 989 (9th Cir. 2012). EPA published a supplemental proposal on August 23, 2012, (77 FR 50973) and took comment on the supplemental proposal through September 24, 2012. Copies of the comments on the supplemental proposal have been added to the docket and are accessible at *www.regulations.gov*. Comment letters from the South Coast Air Quality Management District (''SCAQMD'' or ''District'') and CPV Sentinel LLC (''Sentinel'') support EPA's approval of the AB 1318 Tracking System as a source-specific SIP revision. A comment letter from CCAT opposes our proposal and supplemental proposal to approve of the source-specific SIP revision.

B. Description of Final Rule

We are finalizing our proposal and supplemental proposal to approve the AB 1318 Tracking System into the SIP as a source-specific SIP revision. Even with the slight revision to Attachment A discussed below, the District transferred more offsets into the AB 1318 Tracking System than the amount that is needed to allow Sentinel to operate. We are finalizing our approval because the offsets listed in the Revised Attachment A meet the federal offset integrity criteria, including proper quantification and surplus adjustment. We are finalizing the reasoning in our supplemental proposal for finding that the offsets meet the requirement in 40 CFR part 51, appendix S and 40 CFR 51.165(a)(3)(ii)(C)*(1)(ii)* for offsets resulting from facilities or sources shutting down to have occurred after the base-year for SIP planning purposes. We are interpreting this provision to refer to the 2003 AQMP for PM_{10} for the South Coast and the Coachella Valley Air Basins.

In response to CCAT's comments on September 24, 2012, EPA is making a slight revision to Attachment A to the Technical Support Document for our supplemental proposal. Attachment A contains tables showing our evaluation of a subset of all of the facilities from which the District transferred offsets into its AB 1318 Tracking System. In this final rule, we are attaching a slightly revised version of Attachment A to our Response to Comments document. The only change in the Revised Attachment A is that we have applied a more conservative assumption of zero emissions for the data missing for the facilities listed in Attachment A, Section II.B. The facilities listed in Section II.B were missing Year 2 data. Our supplemental proposal assumed that the Year 2 data would be the same as the reported Year 1 data for these offsets. Based on comments we received from CCAT, we changed the assumption for this group of facilities. In our Revised Attachment A, we are assuming that Year 2 data for these facilities is zero. This change means that we are using the most conservative approach (zero emissions) to quantify the offsets. This revision lowers the quantity of offsets listed in Attachment A by 306 pounds for PM_{10} and 2 pounds for SO_X. Even with this adjustment the quantity of offsets listed in Revised Attachment A exceeds the quantity that Sentinel needs for operation. Because the District is committed to retiring all of the remaining offsets in the AB 1318 Tracking System, including those not listed in Attachment A, the net effect will be a greater reduction in emissions than is required by the CAA.

For additional background information, please see the January 13, 2011 notice of proposed rule for this action (76 FR 2294), the notice of final rule (which was remanded without vacatur on July 26, 2012) (76 FR 22038 Apr. 20, 2011) and the August 23, 2012 supplemental proposal (77 FR 50974).

II. Evaluation of Source-Specific SIP Revision

A. What action is EPA is finalizing?

EPA is finalizing our approval of a SIP revision for the South Coast portion of the California SIP. The SIP revision is codified in 40 CFR 52.220(c)(384) and incorporates by reference the CPV Sentinel Energy Project AB 1318 Tracking System, as adopted by the District.

The SIP revision provides a federally approved and enforceable mechanism for the District to transfer PM_{10} and SO_X offsets from the District's internal bank to the AB 1318 Tracking System for use by the Sentinel Energy Project.

B. Public Comment and Final Action

Our detailed response to all significant comments is contained in the Response to Comments (''RTC'') document in the docket for this action. The RTC can be accessed through *www.regulations.gov* and a very brief summary of our responses to certain comments is provided below. Please refer to our RTC document for our complete response to all comments.

Comment Letter from South Coast Air Quality Management District

Comment: The District supported EPA's proposal and supplemental proposal to approve the AB 1318 Tracking System based on the quantification and surplus adjustment of the offsets listed in Attachment A to the Technical Support Document for the supplemental proposal. The District commented that its 2003 PM_{10} Air Quality Management Plan (AQMP) was the appropriate plan and attainment demonstration to establish the base-year for SIP planning as set forth in 40 CFR 51.165(a)(3)(ii)(C)*(1)(ii).* The District also commented that growth was added to the 2007 AQMP for $PM_{2.5}$.

Response: EPA agrees with the District's comments, as discussed in the RTC document provided in the docket for this rule.

Comment Letter from Sentinel Energy LLP

Comment: Sentinel also supported EPA's proposal and supplemental proposal to approve the SIP revision on generally the same basis as the District.

Response: EPA agrees with Sentinel's comments, as discussed in the RTC document provided in the docket for this rule.

Comment: On October 26, 2012, Sentinel submitted a late comment letter in which it requested EPA to use the good cause exception set forth in section 553(d)(3) of the Administrative Procedures Act, 5 U.S.C. 553(d)(3) to make this final rule effective immediately upon publication in the **Federal Register**. Sentinel stated that the purpose of the usual 30-day delay for rule effectiveness is to allow the regulated entity an opportunity to make any changes necessary to be in compliance with the rule. Sentinel stated that it has been aware of what would be required of it as a result of this rule for 18 months. Sentinel anticipates beginning its commission period in November 2012. Sentinel added that if the power plant is on-line next summer, it will help the region avoid any potential electricity shortfalls.

Response: EPA has discretion to accept late comments and will accept the comment submitted by Sentinel. EPA agrees with Sentinel that it has demonstrated good cause for EPA to issue this final rule with an immediate effective date. Sentinel has been constructing the power plant for the

past 12 to 18 months in anticipation of beginning its commissioning period in November 2012. Sentinel and the District provided information regarding the potential effects of delaying commissioning and operations beyond this date in the briefs submitted in the 9th Circuit ligation pertaining to this rulemaking. Sentinel has indicated that it will not be harmed by the immediate effective date. Therefore the final rule will become effective upon publication.

Comment Letter From California Communities Against Toxics (CCAT) and Communities for a Better Environment (CBE) (collectively CCAT)

Comment: CCAT contends that it was arbitrary and capricious for EPA to publish a supplemental proposal to approve the source-specific SIP revision after the 9th Circuit remanded the rulemaking to EPA without vacatur.

Response: CCAT is incorrect. EPA has discretion under Section 553 of the Administrative Procedures Act to supplement its existing proposed approval of the source-specific SIP revision. We provided notice of the supplemental proposal and a 30-day period for comments. The 9th Circuit's Opinion in *California Communities Against Toxics* v. *EPA,* 688 F.3d at 989 did not indicate that EPA could not supplement its prior proposal.

Comment: CCAT states: ''The Planning Year for the Failed 2003 AQMP Cannot be the Base Year for Valid Offsets: In the Absence of an Approved Attainment Demonstration for $PM_{10,}$ Only Replacement Capacity Can offset New Emissions.''

Response: EPA disagrees. CCAT asserts that the 2003 AQMP is ''no longer valid'' because the South Coast and Coachella Air Basins failed to be re-designated to attainment for PM_{10} in 2006. Based on this presumption, CCAT argues that the SCAQMD is prohibited from relying on offsets resulting from sources that shut down, unless the new source of emissions is replacement capacity for the facility or source that is shutting down. CCAT's presumption is incorrect. Failure to attain a National Ambient Air Quality Standard (''NAAQS'') by the attainment date does not invalidate the plan and attainment demonstration—in this case the 2003 PM_{10} AQMP. The control measures and strategies remain in effect and enforceable along with the emissions inventories and attainment demonstration. Therefore, there is no prohibition on using offsets from facilities or sources that have shut down after the 1997 base-year from the 2003 PM_{10} AQMP to allow new source emissions growth in the South Coast and Coachella Air Basins.

Comment: CCAT states: ''The 2007 AQMP Applies to PM_{10} as well as $PM_{2.5}$ Attainment.''

Response: EPA disagrees with CCAT. The District adopted the 2007 AQMP to demonstrate attainment with the $PM_{2.5}$ NAAQS. EPA approved the 2007 AQMP to demonstrate attainment with the $PM_{2.5}$ NAAQS. The minor references to PM_{10} in the 2007 AQMP for $PM_{2.5}$ are included for a variety of reasons, including to comply with California state law and to ensure continued emissions control at one particular PM_{10} air quality monitor. Minor references to PM_{10} for limited purposes do not mean that the 2007 AQMP establishes a new base-year for $PM_{10.}$ EPA does not consider the incidental inclusion of PM_{10} control measures or updated emissions inventory for a future maintenance plan to be the same as adopting a new AQMP for PM_{10}. EPA's approval of the 2007 AQMP does not mention PM_{10}.

Comment: CCAT states: ''The 2007 AQMP Was Final At All Relevant Times.''

Response: Our supplemental proposal notes that the EPA had not approved the 2007 AQMP at the time the SCAQMD approved transferring the offsets into the AB 1318 Tracking System. EPA has not found any authority establishing the correct date for an approved air quality plan to apply. EPA reasonably determined that the date of transfer of the offsets (i.e. when the offsets become enforceable) is an appropriate date to establish what AQMP applies.

Comment: CCAT states ''EPA Cannot Rely on the Failed, Superseded 2003 AQMP for a Base Year.''

Response: CCAT appears to have raised the same argument in an earlier portion of its comment letter. EPA considers this section to provide additional argumentation of the same point presented in the earlier paragraphs. EPA disagrees with CCAT's additional discussion. CCAT has mischaracterized the Court's holding in *NRDC* v. *EPA,* 571 F.3d 1245, 1267 (D.C. Cir. 2009). The Court held that the base-year should be established by an ''approved'' AQMP and it did not use the term ''valid.'' As discussed elsewhere, the CAA does not define air quality plans as ''valid'' and EPA does not consider the term to be dispositive or persuasive regarding the appropriate AQMP to establish the base-year. CCAT also comments at length on the appropriate method for adding new source growth in the absence of an approved attainment demonstration. EPA considers this portion of CCAT's discussion to be irrelevant because the 2003 PM_{10} AQMP is the approved attainment demonstration for PM_{10} for the South Coast and Coachella Air Basins.

Comment: CCAT states: ''The Offsets Transferred into the 1318 Tracking System are Not Quantifiable.''

Response: EPA disagrees with CCAT and is finalizing our proposal and supplemental proposal to approve the AB 1318 Tracking System because the District transferred more properly quantified and surplus adjusted PM_{10} and SO_X offsets than Sentinel needs to offset its PM_{10} and SO_X emissions. CCAT contends that EPA is required to use two years of emissions data to quantify offsets. CCAT also asserts that two years of emissions data cannot be satisfied with a conservative (i.e. fewer offsets) assumption being used for missing data. Nothing in the CAA or EPA's regulations requires EPA to use two years of emissions data to quantify offsets or prohibits the use of a conservative approach for filling in missing data. EPA is reasonably interpreting our regulations to allow the District to exercise discretion to use a conservative approach to quantify offsets where emissions data is missing. Here, we have concluded that the District's quantification of offsets using a conservative approach—specifically, by substituting zero emissions when data is missing—is reasonable and consistent with the CAA and applicable regulations.

EPA is revising our final approval slightly from our supplemental proposal to ensure that the most conservative estimation of data is made regardless of whether the facility is missing Year 1 or Year 2 data. This means that EPA is reducing the amount of offsets we are determining are properly quantified in Attachment A, Section II.B. to reduce it by 306 pounds of PM_{10} and 2 pounds of SO_X. Therefore, whether a facility is missing Year 1 or Year 2 data, EPA is assuming the emissions for the missing data are zero.

Comment: CCAT states: ''The Offsets Are Not Surplus.''

Response: EPA disagrees. The offsets listed in Attachment A to the TSD for the supplemental proposal are properly surplus adjusted to comply with the CAA.

Comment: CCAT states: ''Rule 1315, Which EPA Did Not Apply, Dictates How the Surplus Adjustment after Deposit Occurs.''

Response: EPA disagrees. The District removed the offsets in the AB 1318 Tracking System from its internal accounts and evaluated each facility to determine if the offsets required surplus

adjustment. Rule 1315 requires the District to make an annual aggregate adjustment to offsets in its Rule 1315 internal accounts. All of the offsets in Attachment A, as revised, to the TSD for EPA's supplemental proposal are properly quantified and surplus adjusted.

Comment: CCAT states: ''If Rule 1315 Were Not Applicable, EPA's Analysis Is Entirely Incomplete.''

Response: EPA disagrees. Rule 1315 does not apply to this source-specific SIP revision for the offset package for a single power plant. All of the offsets in Revised Attachment A are properly surplus adjusted.

III. EPA Action

This source-specific SIP revision complies with all relevant CAA requirements and is consistent with EPA's regulations and guidance. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this source-specific SIP revision into the California SIP. The changes in this final rule from EPA's proposal and supplemental proposal are described above in Section I.B. EPA's interpretation of the CAA and our regulations is provided more fully in our RTC.

Our initial approval of this SIP revision and its related incorporation by reference into the Code of Federal Regulations was previously codified at 40 CFR 52.220(c)(384). Because the SIP submittal has not changed since the initial approval and related codification, and because the previous final rule was not withdrawn, we are not revising the codification of our approval at 40 CFR 52.220(c)(384) in this final action.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30-days.

The purpose of the APA's 30-day effective date provision is to give affected parties time to adjust their behavior before the final rule takes effect. The Sentinel Energy Project, to which this rulemaking applies, requested in a comment letter to EPA that the rule be made effective upon **Federal Register** publication.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with CPV Sentinel's ability to begin commissioning in November 2012 as scheduled. Such interference would delay Sentinel from becoming fully operational by the summer of 2013, which is when the California Energy Commission is expecting the plant to come on line. This delay could result in significant impacts to electrical reliability and air quality.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review 13563

This action will approve the source-specific SIP revision known as the CPV Sentinel Energy Project AB 1318 Tracking System into the California SIP. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a) (2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 1, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–27564 Filed 11–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0985; FRL–9368–7]

Flonicamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of flonicamid in or on Berry, low growing, subgroup 13–07G; Rapeseed subgroup 20A, and cucumber. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 14, 2012. Objections and requests for hearings must be received on or before January 14, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0985, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs

Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; email address: *jackson.sidney@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0985 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 14, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0985, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, March 14, 2012 (77 FR 15012) (FRL–9335–9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7842) by IR–4, IR–4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.613 be amended by establishing tolerances for combined residues of the insecticide, flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide and its metabolites TFNA, 4-trifluoromethylnicotinic acid, TFNA-AM, 4-trifluoromethylnicotinamide, TFNG, *N*-(4-trifluoromethylnicotinoyl)glycine, in or on cucumber at 1.3 parts per million (ppm), Berry, low growing subgroup 13–07G at 1.4 and Rapeseed subgroup 20A at 1.5 ppm. That document referenced a summary of the petition prepared by ISK Biosciences, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and/or current Agency policies, EPA has revised/modified the petitioned-for flonicamid residue tolerance level in certain commodities and revised the tolerance expression for flonicamid residues. EPA is also revising the existing crop group tolerance on ''Vegetable, cucurbit, group 9'' to exclude cucumbers. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for flonicamid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with flonicamid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also

considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Flonicamid has low acute toxicity via the oral, inhalation and dermal routes of exposure. Flonicamid is nonirritating to the eye and skin and is not a dermal sensitizer. Its metabolites, TFNA, TFNA–AM, TFNG, TFNG–AM, and TFNA–OH, also demonstrated low toxicity in acute oral toxicity studies. In the 28-day dermal study with flonicamid technical no dermal or systemic toxicity was seen at the limit dose. In oral studies using rats and dogs, the kidney and liver are the target organs for flonicamid toxicity. Increased kidney weight and hyaline droplet deposition were observed as well as liver centrilobular hypertrophy in the rat 28-day oral range-finding, 90-day oral, developmental, and reproductive studies. The 90-day dog study showed kidney tubular vacuolation as well as increased adrenal weights, increased reticulocytes and decreased thymus weights. Increased reticulocyte count was noted in both the subchronic and chronic dog studies.

In rats, developmental effects including increased incidence of cervical ribs were observed at maternally toxic (liver and kidney gross and histopathological effects) dose levels. In rabbits, developmental effects were not observed at any dose level including maternally toxic doses. Offspring effects (decreased body weight and delayed sexual maturation) in the multi-generation study were seen only in the presence of parental toxicity (kidney effects in males, blood effects in females). Thus, there is no evidence that flonicamid results in increased susceptibility (qualitative or quantitative) in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

There are no concerns for flonicamid neurotoxicity. Although clinical signs suggesting potential neurotoxic effects (e.g., decreased motor activity, tremors) were seen in the acute and subchronic neurotoxicity studies; other effects in these studies (e.g., increased mortality, and significant decreases in food consumption and body weight) indicated that the clinical signs were a result of the animals being in an extreme condition or otherwise compromised and in a state of general malaise. Also, these types of effects were not observed in the other subchronic or chronic studies in mice, rats or dogs. Thus, there is not clear evidence of neurotoxicity. Lastly, clear no-observed-adverse-effect-levels (NOAELs) and lowest-observed-adverse-effect-levels (LOAELs) were defined for the clinical signs, which are above the levels currently used for risk assessment purposes. Preliminary results of a 28-day oral (dietary) immunotoxicity study of technical flonicamid in female CD–1 mice suggest that flonicamid is not an immuno-suppressant, either structurally or functionally up to and including dose levels exceeding the Limit Dose.

Although there is some limited evidence suggesting that flonicamid has a potential for carcinogenic effects, EPA determined that quantification of risk using a non-linear approach (i.e., using a chronic reference dose (cRfD)) adequately accounts for all chronic toxicity, including carcinogenicity that could result from exposure to flonicamid. The following considerations support that determination. First, mutagenicity studies were negative for the parent chemical, flonicamid, and its metabolites, TFNA, TFNA–AM, TFNG, TFNG–AM, and TFNA–OH. Second, although flonicamid is carcinogenic in CD–1 mice, based on increased incidences of lung tumors associated with Clara cell activation, this tumor type is associated with species and strain sensitivity and is not directly correlated with cancer risks in humans. Third, nasal cavity tumors seen in male Wistar rats were linked to incisor inflammation and not considered to be treatment related. These tumor findings were confounded by the lack of a dose-response and the biological significance is questionable.

Specific information on the studies received and the nature of the adverse effects caused by flonicamid as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in document, ''Flonicamid: Human Health Risk Assessment for the Proposed Use on Low Growing Berry, Rapeseed, and Greenhouse Grown Cucumbers'' at page 29 in docket ID number EPA–HQ–OPP–2011–0985.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for flonicamid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLONICAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	POD and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	None/NA	None/NA	No toxicological effects seen in a single dose study.
Chronic dietary (All populations).	NOAEL= 3.7 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.04 mg/kg/day. cPAD = 0.04 mg/kg/day	2-Generation reproduction rat study. Parental LOAEL = 22 mg/kg/day based on increased kidney weights, kidney hyaline deposition, increased blood serum LH (F_1 females).

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLONICAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	POD and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer	A nonlinear RfD approach was used to assess cancer risk.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. POD = Point of Departure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to flonicamid, EPA considered exposure under the petitioned-for tolerances as well as all existing flonicamid tolerances in 40 CFR 180.613. EPA assessed dietary exposures from flonicamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for flonicamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Service of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used an unrefined chronic dietary assessment conducted assuming 100 percent crop treated (PCT) estimates, tolerance-level residues for all commodities, and empirical or Dietary Exposure Evaluation Model–Food Commodity Intake Database (DEEM–FCID™) default processing factors.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determine mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to flonicamid. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. Anticipated residue and *PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for flonicamid. Tolerance-level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for flonicamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of flonicamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

The drinking water assessment was conducted using a parent only and total toxic residues of flonicamid (flonicamid TTR) approach. Total toxic residues include TFNA, TFNA–AM, TFNA–OH, TFNG, and TFNG–AM.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of total toxic residues of flonicamid for chronic exposures for non-cancer assessments are estimated to be 1.9 parts per billion (ppb) for surface water and 0.00132 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 1.9 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Flonicamid is currently registered for the following uses that could result in non-occupational exposures: Commercial ornamentals, interiorscapes, and nurseries. However, these product labels do not allow use in home gardens and greenhouses or in any residential settings. Therefore, residential handler scenarios are not expected and need not be assessed. Additionally, because no dermal toxicity endpoint was identified for flonicamid, a post-application residential exposure/risk assessment is not necessary. Post-application inhalation exposures are expected to be negligible. Therefore, no residential exposure is expected.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found flonicamid to share a common mechanism of toxicity with any other substances, and flonicamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that flonicamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply

an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity database for flonicamid includes prenatal developmental toxicity studies in rats and rabbits and a multi-generation reproduction toxicity study in rats. There is no evidence that flonicamid results in increased susceptibility (qualitative or quantitative) in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the multi-generation reproduction study. No developmental effects were seen in rabbits. In the multi-generation reproduction study, developmental delays in the offspring (decreased body weights, delayed sexual maturation) were seen only in the presence of parental toxicity (kidney and blood effects). Also, there are clear NOAELs and LOAELs for all effects. The degree of concern for prenatal and/or post-natal susceptibility is, therefore, low due to the lack of evidence of qualitative and quantitative susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for chronic dietary and other exposures, except as noted below. That decision is based on the following findings:

i. The toxicity database for flonicamid is complete except for an immunotoxicity study and a subchronic inhalation study. Existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Except for decreased thymus weights in the subchronic dog study, there are no other indications in the available studies that organs associated with immune function are affected by flonicamid, and preliminary results of the above-mentioned immunotoxicity study suggested that flonicamid is not an immunosuppressant. EPA does not believe that the final results of the immunotoxicity study will result in a dose less than the point of departure already used in this risk assessment and an additional database uncertainty factor for potential immunotoxicity does not need to be applied.

A subchronic 28-day inhalation study is required and is outstanding at this time. In the absence of a route specific inhalation study, EPA has retained a 10X FQPA SF to assess risks for inhalation exposure scenarios. However, residential inhalation exposures are not expected.

ii. The available data base includes acute and subchronic neurotoxicity studies. As discussed in Unit III.A., EPA has concluded that the clinical signs observed in those studies were not the result of a neurotoxic mechanism and that therefore a developmental neurotoxicity study is not required.

iii. There was no evidence for quantitative or qualitative susceptibility following oral exposures to rats *in utero* or oral exposure to rabbits *in utero.*

iv. There are no residual uncertainties identified in the exposure databases. An unrefined conservative chronic dietary exposure assessment for food and drinking water was conducted, assuming tolerance level residues for all existing and proposed commodities and 100 PCT of registered and proposed crops treated. The drinking water assessment utilized water concentration values generated by models and associated modeling parameters which are designed to produce conservative, health protective, high-end estimates of water concentrations which are not likely to be exceeded. The dietary (food and drinking water) exposure assessment does not underestimate the potential exposure for infants, children, or women of child bearing age.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. An endpoint attributable to a single oral dose was not identified in the toxicity database; therefore, flonicamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to flonicamid from food and water will utilize 11% of the cPAD for the general U.S. population and 28% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no expected long-term residential exposures. Because drinking water estimates have been combined with dietary exposures, the dietary assessment discussed in Unit III.C.3., serves as the aggregate exposure and risk assessment for flonicamid.

3. *Short-term and Intermediate-term risk.* Short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term aggregate risk assessments were not conducted because residential exposure is not expected from the use pattern proposed in this registration request, or from any registered uses.

4. *Aggregate cancer risk for U.S. population.* Based on the discussion in Unit III.A., EPA has concluded that the cPAD is protective of possible cancer effects.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to flonicamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available to enforce the tolerances for flonicamid and the major metabolites in plants and livestock. The proposed method for plants uses Liquid Chromatography with Tandem Mass Spectrometry (LC/MS/MS) (FMC No. P–3561M) to determine the residues of flonicamid and its major metabolites, TFNA–AM, TFNA, and TFNG.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever

possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex MRLs established on the proposed crops.

C. Revisions to Petitioned-For Tolerances

Based on results from the Organization for Economic Cooperation and Development (OECD) spreadsheet tolerance calculation procedures, EPA modified certain IR–4 proposed tolerances for flonicamid residues. EPA increased the proposed tolerance from 1.4 to 1.5 ppm for Berry, low growing, subgroup 13–07G and from 1.3 to 1.5 ppm for cucumber. Because there is an existing crop group tolerance for ''Vegetable, cucurbit, group 9'' that applies to cucumbers, EPA, for the sake of clarity, is revising that existing crop group tolerance to exclude cucumbers.

Finally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of flonicamid not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for the residues of flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites TFNA (4-trifluoromethylnicotinic acid, TFNA–AM (4-trifluoromethylnicotinamide) and TFNG, *N*-(4-trifluoromethylnicotinoyl)glycine, in or on cucumber at 1.5 ppm; Berry, low growing, subgroup 13–07G at 1.5 ppm; and Rapeseed subgroup 20A at 1.5 ppm. Additionally, the tolerance entry for Vegetable, cucurbit group 9, is revised to exclude cucumber.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 1, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.613 as follows:
■ i. Revise the introductory text of paragraph (a)(1).
■ ii. Remove the entry ''Vegetable, cucurbit, group 9'' from the table in paragraph (a)(1), and add alphabetically four new entries.
■ iii. Revise the introductory text of paragraph (a)(2).

The added and revised text read as follows:

§ 180.613 Flonicamid; tolerances for residues.

(a) * * * (1) Tolerances are established for the residues of the insecticide flonicamid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylnicotinic acid), TFNA–AM (4-trifluoromethylnicotinamide),

and TFNG, *N*-(4-trifluoromethylnicotinoyl)glycine, calculated as the stoichiometric equivalent of flonicamid, in or on the following commodities.

Commodity	Parts per million
Berry, low growing, subgroup 13–07G	1.5
* * * * *	
Cucumber	1.5
* * * * *	
Rapeseed subgroup 20A	1.5
* * * * *	
Vegetable, cucurbit, group 9, except cucumber	0.4
* * * * *	

(2) Tolerances are established for the residues of the insecticide flonicamid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of flonicamid, *N*-(cyanomethyl)-4-(trifluoromethyl)-3-pyridinecarboxamide, and its metabolites, TFNA (4-trifluoromethylnicotinic acid), and TFNA–AM (4-trifluoromethylnicotinamide), calculated as the Stoichiometric equivalent of flonicamid, in or on the following commodities.

* * * * *

[FR Doc. 2012–27702 Filed 11–13–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL 9751–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Deletion of the Waste Management of Michigan-Holland Lagoons Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Deletion of the Waste Management of Michigan-Holland Lagoons Superfund Site (Site), located in Ottawa County, Michigan from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final rule is effective January 14, 2013 unless EPA receives adverse comments by December 14, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *Email:* Gladys Beard, NPL Deletion Process Manager, at *beard.gladys@epa.gov* or Dave Novak, Community Involvement Coordinator, at *novak.dave@epa.gov.*
- *Fax:* Gladys Beard, NPL Deletion Process Manager, at (312) 697–2077.
- *Mail:* Gladys Beard, NPL Deletion Process Manager, U.S. Environmental Protection Agency (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7253; or Dave Novak, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7478 or (800) 621–8431.
- *Hand delivery:* Dave Novak, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m. CST, excluding federal holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

- U.S. Environmental Protection Agency-Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Phone: (312) 353–1063. Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m. CST, excluding Federal holidays.
- Herrick District Library, 303 South River Avenue, Holland, MI 49423, Phone: (616) 355–3100. Hours: Monday through Tuesday, 9:00 a.m. to 9:00 p.m. EST; Wednesday through Friday, 9:00 a.m. to 6:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Gladys Beard, NPL Deletion Process Manager, U.S. Environmental Protection Agency (SR–6J), 77 West Jackson

Boulevard, Chicago, IL 60604, (312) 886–7253, or *beard.gladys@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 5 is publishing this direct final Notice of Deletion of the Waste Management of Michigan-Holland Lagoons Superfund Site (Holland Lagoons Site) from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective January 14, 2013 unless EPA receives adverse comments by December 14, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''*Proposed Rules*'' section of this issue of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Holland Lagoons Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of Michigan prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''*Proposed Rules*'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through MDEQ, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, the Holland Sentinel Newspaper. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Holland Lagoons Site (CERCLIS ID# MID060179587) is located at 2700 North 168th Avenue, between Riley and James Streets, in unincorporated Park Township, near Holland, Michigan. The Site is an 80-acre property located about 0.5 miles from the eastern shore of Lake Michigan in Ottawa County. The Site consists of a site entrance, former lagoon area, dewatering lagoons, former landfill area, a haul road on the eastern half of the Site, and an office/maintenance garage building. The area around the Site consists of mixed residential, recreational, and agricultural use.

Properties adjoining the Holland Lagoons Site include the Riley Road Recreational Area, several small subdivisions of homes, privately held parcels, and a blueberry field to the southeast. The Southwest Ottawa County Landfill (SWOCLF) Superfund Site is adjacent to, northeast, and upgradient of the Holland Lagoons Site. The SWOCLF Site is a state-lead enforcement site. A groundwater plume migrating from the SWOCLF Site impacts the groundwater southwest and downgradient of the county landfill, including groundwater beneath the Holland Lagoons Site.

The Holland Lagoons Site was operated by Jacobusse Refuse Service Company as a municipal garbage dump, liquid waste dewatering facility, and headquarters for its hauling company from the mid 1940's until 1977. The company was purchased by Refuse Services, Inc., in 1972 and the name was changed to Holland Lagoons. Refuse Services, Inc., merged into Michigan Waste Systems, Inc. in 1973 and Michigan Waste Systems, Inc. subsequently changed its name to Waste Management of Michigan, Inc. (WMMI).

A portion of the Site was originally used for the disposal of vegetable pickling waste, apple pulp, digester sludge, barrels of spent extracts, brine, the dewatering of liquid industrial wastes, including aluminum and metal hydroxide wastes, and wastewater treatment plant sludge. Disposal occurred in up to as many as nine dewatering lagoons located in the north central area of the Site. The dewatering of metallic wastes using these lagoons ceased in October 1977. Permits indicate that Jacobusse discontinued disposal of all liquid waste at the Site in 1980. In addition, the southwest area of the Site was used for the temporary burial of drums of chloral hydrate, which were removed in 1980. Municipal refuse was hauled to a landfill located in the south central area of the Site from 1957 to 1964. The landfill operated as an open burning dump and the northwest corner of the Site was used as a maintenance facility for the Jacobusse fleet of trucks.

The Thomas residential well, located due west of the Site, was discovered to be contaminated with trichloroethylene (TCE) in 1970. The TCE was suspected to have migrated from the Holland Lagoons Site. The continued presence of elevated concentrations of TCE was confirmed in a Michigan Department of Natural Resources (MDNR) follow-up sampling event in 1979. Park Township began to hook up residences located within the vicinity of the Holland Lagoons Site, including the Thomas residence, to the expanded municipal water supply line by 1984. The county and township continued to hook up residences downgradient of the Holland Lagoons and SWOCLF Sites into the expanded municipal water supply system. The Holland Lagoons Site was proposed to the NPL on October 15, 1984 (49 FR 40320) and finalized on the NPL on June 10, 1986 (51 FR 21099).

From 1993 through 1997, EPA and MDEQ (formerly a part of MDNR) held discussions to allow NPL sites with a state-lead enforcement designation to follow the Remedial Action Plan process in Part 201 of the Michigan Natural Resources and Environmental Protection Act (NREPA). The EPA and MDEQ signed a Memorandum of Agreement in 1997 for the Holland Lagoons Site.

Remedial Investigation and Feasibility Study

In 1994, the MDNR and WMMI entered into an Administrative Order by Consent (AOC) for Response Activities for WMMI to undertake a Remedial Investigation/Feasibility Study (RI/FS) at the Site. In addition to actions taken earlier, WMMI removed four underground storage tanks from within the truck maintenance area in 1985. Concurrent with the RI, WMMI performed an Interim Response Action (IRA) at the Site by excavating discolored soils plausibly contaminated with heavy metals on the haul road and from other on-site areas and to remove general surface debris from the Site. WMMI also excavated the former municipal trash landfill area and disposed of the material off-site. The interim response was completed by the end of 2000. All subsequent soil samples showed levels of metals at or below generic residential criteria or background values for the State of Michigan. Michigan Part 201 Cleanup Criteria is within EPA's acceptable risk range. WMMI performed a RI and baseline risk assessment, including an ecological assessment at the Site from 1994–1996 and additional sampling between 1998 and 2007.

Area A—Site Entrance: Soil boring samples were collected and analyzed for inorganic and organic parameters. The white powder found on the ground surface north of the Site building appeared to be lime based on the elevated calcium level; however, the calcium levels were below background concentrations. No organic contaminants were detected above background or Part 201 Residential Cleanup Criteria. A trench approximately 80 feet by 10 feet was discovered in an area south of the building. A soil boring was collected and analysis detected lead and zinc at concentrations above background. The approximately 40 cubic yards of impacted soil was excavated during the IRA. No contaminants were detected above background or Part 201 Residential Cleanup Criteria in verification samples.

Additional soil samples were collected from the same location as the previous collection and consisted mostly of the white powder material. Analysis detected no inorganic contaminants at concentrations that exceeded Part 201 Residential Cleanup Criteria.

Area B—Former Dewatering Lagoon Area: Analysis of the soil boring samples collected from the former dewatering lagoon area did not detect any organic or inorganic contaminants above background or Part 201 Residential Cleanup Criteria. The results of the soil borings and analysis from the investigation demonstrated that the lagoons were properly abandoned.

Area C—Former Landfill Area: Analysis of the soil boring samples collected from the former landfill area did not detect any organic or inorganic contaminants above background or Part 201 Residential Cleanup Criteria. The ash, metal cans, and glass bottles in the former landfill area were excavated during the IRA for disposal off-site. Approximately 1,855 cubic yards of material was removed from the area. Results of the analysis of verification samples showed there were two small areas with levels of inorganic parameters exceeding the background concentration. An additional 40 cubic yards of soil was removed during the interim response and disposed of off-site. No contaminants were detected above background or Part 201 Residential Cleanup Criteria in verification samples.

A bermed drum area was located in the south end of the former landfill. The berm was 70 by 30 feet and contained six old, rusted drums. These drums were removed during the IRA along with 224 cubic feet of bluish-green stained soil found at the bottom of the bermed area. No contaminants were detected above background or Part 201 Residential Cleanup Criteria in verification samples.

Area D—Haul Road: The results of the soil boring sampling from the haul road indicated that the bluish-green soil found at the ground surface along parts of the road was contaminated with heavy metals. Analysis of the soil sample detected chromium, copper, lead, nickel, selenium, zinc, and cyanide above their background values. Impacted soil which was identified in the previous investigations was removed during the IRA. An area 400 feet by 70 feet by 1.5 feet deep was excavated, removing approximately 1,433 cubic yards of soil. Verification samples indicated the soil that remained was not impacted above background concentrations for heavy metals. An additional 30 cubic yards of soil was removed from the adjacent Ottawa County property.

During an additional investigation, another 540 cubic yards of soil was excavated from the haul road area and disposed of off-site. The verification samples collected demonstrated that the remaining soil met the Part 201 Residential Cleanup Criteria.

Area E—Former Drum Burial Area: Analysis of the soil boring samples collected from the former drum burial area did not detect any organic or inorganic contaminants above background or Part 201 Residential Cleanup Criteria.

Area F—Eastern Half of Site: The investigation of this area of concern involved collecting two soil samples from four boring locations. Four

additional borings were collected from along the eastern edge of the area for background analysis. The results of the background borings and the soil borings indicated no contaminants were detected above the Part 201 Residential Cleanup Criteria. No environmental hazard was found in the eastern half of the Site.

Underground Storage Tanks (USTs): An initial review of the 1985 UST report did not clearly indicate that the four USTs had been removed, as a result subsequent investigations focused on finding these USTs and determining whether there was any related contamination.

During the investigations, soil boring samples were collected from the areas of the USTs at the northeast corner and southwest corner of the building. The investigation also involved searching the area with an electro-magnetic (EM) detector to determine if there were any large metal objects buried in the area. No drums were detected; therefore, it was concluded that all four of the USTs had been removed. The results of these soil boring samples did not detect any petroleum hydrocarbon or organic contaminants above Part 201 Residential Cleanup Criteria.

Groundwater: Groundwater was sampled as part of several investigations. The results of the groundwater samples collected upgradient of the Site were used to develop inorganic parameters background and anthropogenic background concentrations for the area. Background concentrations are concentrations of chemicals common to groundwater that have not been impacted by anthropogenic effects. Anthropogenic background levels are determined by analyzing groundwater that has been impacted by an upgradient source such as the SWOCLF Site. Anthropogenic background concentrations were determined from several wells located downgradient of the SWOCLF Site, but upgradient of any known disposal areas on the Holland Lagoons Site.

Benzene was the only organic contaminant detected in the on-site monitoring wells above the Maximum Contaminant Levels (MCL) established under the Safe Drinking Water Act (SDWA) and Part 201 Residential Cleanup Criteria of 5 micrograms per liter (µg/1). All of these detections were found in wells located southwest of the Site at concentrations ranging from 14 µg/l to 28 µg/1 and no on-site source was detected. Benzene is a contaminant being monitored at the SWOCLF Site. At the SWOCLF Site, benzene had been detected at levels as high as 149 µg/1 in purge wells and 305 µg/1 in monitoring wells; therefore, the MDEQ concluded that the source of the benzene is the SWOCLF Site.

Inorganic contaminants found in wells on-site includes: aluminum, arsenic, antimony, beryllium, cadmium, lead, manganese, zinc, and vanadium. Aluminum, antimony, lead, manganese, and zinc were found in background or anthropogenic background wells. Arsenic did not exceed the MCL or Part 201 Residential Cleanup Criteria. Subsequent sampling results indicated that aluminum, antimony, beryllium, cadmium, lead, manganese, zinc, and vanadium did not exceed MCLs, Part 201 Residential Cleanup Criteria, background and/or anthropogenic background.

In March 2005, the MDEQ and Ottawa County entered into a Stipulation for the SWOCLF Site, under which Ottawa County is required to perform the following remedial actions at the SWOCLF Site: construct a new landfill cap; install and operate a new extraction well system around the landfill; prevent the discharge to Lake Michigan of groundwater containing hazardous substances exceeding Groundwater to Surface Water Interface Criteria; implement reliable land and resource use restrictions (institutional controls) to restrict construction and use of wells within the groundwater plume; properly abandon all existing residential wells once residents have been hooked into the municipal water supply; and operate the then current downgradient extraction system until it was demonstrated that requirements have been achieved. The responsibility for the remaining wells on the Holland Lagoons Site has been transferred to Ottawa County to use in monitoring the SWOCLF plume.

Currently, Ottawa County has constructed the new landfill cap and completed the hook up of residents to the municipal water supply. In 2009, Ottawa County implemented an area-wide groundwater use restriction which prohibits human consumption of groundwater, limits well installation/use and outlines procedures for well abandonments. All hook ups and abandonments were completed in 2009. Ottawa County continues to operate the downgradient extraction system. In 2009, Ottawa County installed and began operating the new extraction well system along the west and south boundary of the SWOCLF Site.

Former Facility Office and Maintenance Garage Building: WMMI conducted soil and groundwater sampling below the former facility office and maintenance garage building as noted as a recommendation in the 2006 Five-Year Review Report. The soil and groundwater sampling results did not reveal any chemicals of concerns above MCLs or Part 201 Residential Criteria.

Decision Summary: The Final Feasibility Study and Remedial Action Plan Closure Report, which called for No Further Action to be implemented at the Site was approved by MDEQ on October 13, 2008. On May 19, 2011, the MDEQ approved WMMI's request to rescind the August 18, 1997 restrictive covenant because Ottawa County has implemented an area-wide groundwater restriction as part of the SWOCLF cleanup program. The Notice of Rescission of Land and/or Resources Use Restrictions was filed and recorded by the Ottawa County Register of Deeds on June 2, 2011. The Ottawa County Contaminated Groundwater Use Ordinance (March 2009) meets the requirements of a ''reliable use restriction'' under Michigan's cleanup rules (Part 201).

The rescinded restrictive covenant provided the following restrictions at the Holland Lagoons Site: (1) Restricts the use of the property to those uses compatible with the limited residential land use criteria as defined in Section 20120a(1)(f) of Part 201; (2) prohibits groundwater well installation and groundwater use within the property boundary for all domestic, commercial, and industrial uses; (3) prohibits the construction of groundwater fed impoundments; (4) prohibits excavation of soil beyond the saturated zone; and (5) requires soil sampling if existing structure is razed and 30-days notice to MDEQ.

Selected Remedy

EPA signed a ROD on August 17, 2011 and has determined that no further remedial action is necessary for the Holland Lagoons Site. The remedy is protective of human health and the environment; and allows for unlimited exposure and unrestricted use.

Response Actions

The August 2011, ''No Further Action'' ROD determined that no further Federal response was required.

Operation and Maintenance

The groundwater underneath the Site is monitored as part of the Ottawa County SWOCLF groundwater monitoring program and contamination in the groundwater plumes is not related to contamination and sources at Holland Lagoons Site. There will be no active remediation at the Site; therefore, no operation and maintenance (O&M) is necessary.

Five-Year Review

The first and only five-year review, completed on September 25, 2006, found the remedy to be protective in the short-term and identified five issues that needed to be addressed in order for the remedy to be protective in the long-term. All of the issues have now been addressed as described below:

1. *Issue:* Noncompliance with the AOC requires the completion of a Part 201 approved Feasibility Study and Remedial Action Plan Closure Report. *Follow-Up:* The MDEQ approved the Final Feasibility Study and Remedial Action Plan Closure Report on October 13, 2008, which was submitted by WMMI.

2. *Issue:* WMMI must provide information to prove the six on-site source areas, due to the completion of past remediation activities, are no longer contributing contaminants to the groundwater plume migrating under the Site and that all of the contaminants found in the groundwater plume originate from the adjacent and upgradient SWOCLF Site. *Follow-Up:* The Final Feasibility Study and Remedial Action Plan Closure Report included data to confirm that the past remediation activities were completed at the six on-site areas and that no on-site sources were contributing to the groundwater plume migrating onto the Holland Lagoons Site from the SWOCLF Site.

3. *Issue:* Ensure that effective interim institutional controls (ICs) are in place. *Follow-Up:* EPA's ''No Further Action'' ROD did not require any additional ICs because: (1) groundwater impacts were determined to be migrating from the SWOCLF Site and not part of site-related contamination from Holland Lagoons and (2) an area-wide groundwater ordinance has been implemented as part of the response at the SWOCLF Site. As a result, the Declaration of Restrictive Covenant has been rescinded. The Notice of Rescission of Land and/or Resources Use Restrictions was filed and recorded by the Ottawa County Register of Deeds on June 2, 2011. Ottawa County will continue conducting a cleanup of the SWOCLF Site, including maintenance of an area-wide groundwater use restriction to prevent groundwater use.

4. *Issue:* For the remedy to be protective in the long-term, effective ICs may be implemented and maintained as part of the final RAP. *Follow-up:* EPA's ''No Further Action'' ROD did not require ICs. The ROD allows for unlimited use and unrestricted exposure.

5. *Issue:* A contamination source area may exist beneath the former office building. *Follow-up:* In 2007, WMMI conducted soil and groundwater sampling below the former facility office and maintenance garage building. The soil and groundwater sampling results did not reveal any chemicals of concern above the MCLs or Part 201 criteria.

In summary, EPA has determined that no further remedial action is necessary for the Holland Lagoons Site. Previous responses at the Site eliminated the need for a further remedial action. Contaminated soil from on-site disposal pits was excavated and disposed of off-site. No further five-year reviews are required because contamination has been remediated to allow for unlimited use and unrestricted exposure.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion of this Site from the NPL, are available to the public in the information repositories and at *www.regulations.gov.*

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP (40 CFR 300.425(e)) states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Michigan, has determined that the responsible parties have implemented all response actions required, and no further response action by responsible parties is appropriate.

V. Deletion Action

EPA, with concurrence from State of Michigan through the MDEQ, has determined that all appropriate response actions under CERCLA have been completed. EPA received concurrence from the State of Michigan on April 5, 2012. Therefore, EPA is deleting this Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective January 14, 2013 unless EPA receives adverse comments by December 14, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: October 31, 2012.

Susan Hedman,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing, the entry for ''MI, Waste Management of Michigan (Holland), Holland''.

[FR Doc. 2012–27706 Filed 11–13–12; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register
Vol. 77, No. 220
Wednesday, November 14, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0509; Airspace Docket No. 12–ANM–15]

Proposed Amendment of Class E Airspace; Casper, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace areas at Casper, Natrona County International Airport, Casper, WY, to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to the airport. Decommissioning of the Muddy Mountain VOR Omnidirectional Range Tactical Air Navigation (VORTAC) has made reconfiguration necessary for the safety and management of aircraft operations at Casper, Natrona County International Airport, Casper, WY.

DATES: Comments must be received on or before December 31, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0509; Airspace Docket No. 12–ANM–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0509 and Airspace Docket No. 12–ANM–15) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0509 and Airspace Docket No. 12–ANM–15''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface due to the decommissioning of the Muddy Mountain VORTAC at Casper, Natrona County International Airport, Casper, WY. This action also would amend Class E en route domestic airspace extending upward from 1,200 feet above the surface at the airport by removing the exclusionary language in the regulatory text. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraphs, 6004, 6005 and 6006, respectively, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Casper, Natrona County International Airport, Casper, WY.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6004 Class E airspace Designated as an Extension to a Class D Surface area.

* * * * *

ANM WY E4 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from the surface within 4.3 miles each side of the 036° bearing of the Natrona County International Airport extending from the airport to 13.7 miles northeast of the airport, and within 4.3 miles each side of the 216° bearing of the Natrona County International Airport extending from the airport to 15 miles southwest of the airport, and within 2.7 miles each side of the 269° bearing of the Natrona County International Airport extending from airport to 13.5 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from 700 feet above the surface within a 24-mile radius of the Natrona County International Airport; that airspace extending upward from 1,200 feet above the surface within a 38-mile radius of the Natrona County International Airport.

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM WY E6 Casper, WY [Modified]

Casper, Natrona County International Airport, WY
(Lat. 42°54′29″ N., long. 106°27′52″ W.)

That airspace extending upward from 1,200 feet above the surface within a 85-mile radius of Natrona County International Airport.

Issued in Seattle, Washington, on October 23, 2012.

Vered Lovett,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–27667 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9751–1]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Waste Management of Michigan-Holland Lagoons Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, notice of intent

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete the Waste Management of Michigan-Holland Lagoons Superfund Site (Site) located in Ottawa County, Michigan from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by December 14, 2012.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *Email:* Gladys Beard, NPL Deletion Process Manager, at *beard.gladys@epa.gov* or Dave Novak, Community Involvement Coordinator, at *novak.dave@epa.gov.*
- *Fax:* Gladys Beard, NPL Deletion Process Manager, at (312) 697–2077.
- *Mail:* Gladys Beard, NPL Deletion Process Manager, U.S. Environmental Protection Agency (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7253, or Dave Novak, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7478 or (800) 621–8431.
- *Hand delivery:* Dave Novak, Community Involvement Coordinator, U.S. Environmental Protection Agency (SI–7J), 77 West Jackson Boulevard, Chicago, IL 60604. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The normal business hours are Monday through Friday, 8:30 a.m. to 4:30 p.m. CST, excluding federal holidays.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public

docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

• U.S. Environmental Protection Agency—Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Hours: Monday through Friday, 8:30 a.m. to 4:30 p.m. CST, excluding Federal holidays.

• Herrick District Library, 300 South River Avenue, Holland, MI 49423, Phone: (616) 355–3100, Hours: Monday through Tuesday, 9:00 a.m. to 9:00 p.m. EST; Wednesday through Friday, 9:00 a.m. to 6:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Gladys Beard, NPL Deletion Process Manager, U.S. Environmental Protection Agency (SR–6J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–7253, or *beard.gladys@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''*Rules and Regulations''* section of this issue of the **Federal Register**, we are publishing a direct final Notice of Deletion of the Waste Management of Michigan-Holland Lagoons Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules and Regulations* section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, and Water supply.

Dated: October 31, 2012.

Susan Hedman,

Regional Administrator, Region 5

[FR Doc. 2012–27705 Filed 11–13–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2012–0054; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Heller Cave Springtail as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Heller Cave springtail as endangered or threatened under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Heller Cave springtail is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: We request that we receive information on or before January 14, 2013. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section below) is 11:59 p.m. Eastern Time on this date. After January 14, 2013, you must submit information directly to the Division of Policy and Directives Management (see **ADDRESSES** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search field, enter Docket No. FWS–R5–ES–2012–0054, which is the docket number for this action. Then click on the Search button. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2012–0054; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Martin Miller, Threatened and Endangered Species Chief, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035; by telephone at 413–253–8615; or by facsimile at

413–253–8482. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Heller Cave springtail (*Typhlogastrura helleri*) from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including survey data and distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Information related to the operation and status of the small, large, or both, non-coal mining project(s) and permit(s) associated with the ''Carlim Quarry'' or ''Catherine Properties-Heller Mine'' in Catherine Township, Blair County, Pennsylvania. The owner or operator of this project may be known as Gulf Trading and Transport, Catherine Corporation, or General Trade Corporation.

If, after the status review, we determine that listing the Heller Cave springtail is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species;'' and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Northeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time of the petition's receipt. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On October 13, 2011, we received a petition dated October 13, 2011, from Mollie Matteson (petitioner), on behalf of the Center for Biological Diversity (CBD) and the Juniata Valley Audubon Society (JVAS), requesting that the Heller Cave springtail be listed as endangered and that critical habitat be designated under the Act (Petition). The petition clearly identified itself as such and included the requisite identification information for the petitioners, required at 50 CFR 424.14(a). In a January 8, 2012, letter to the petitioner, we responded that we had received the petition sent to the Secretary of the Interior and that we would contact the petitioner when we completed review of the petition. On January 11, 2012, the petitioner sent additional information to supplement the October 13, 2011 petition. This finding addresses the supplemented petition.

Previous Federal Actions

There are no previous Federal actions on the Heller Cave springtail.

Species Information

The Heller Cave springtail is a small, wingless, cave-dwelling arthropod in the Family Hypogastruridae and Order Collembola. All Collembola have the common name of ''springtail'' because of their furcula, or ''jumping apparatus''

located underneath and at the end of the abdomen (Christiansen 1992, p. 3). The Heller Cave springtail type specimen (individual used to formally describe the species) is 1.4 millimeters (mm) (0.06 inches (in)) long, but other specimens have ranged up to 2.1 mm (0.08 in) in length (Christiansen and Wang 2006, p. 89). The Heller Cave springtail is tan with five to six black eye spots on each side of its head and three thoracic (chest) segments (Christiansen and Wang 2006, pp. 92–94). A more detailed species' description can be found in Christiansen and Wang (2006, pp. 92–94).

The petitioner, citing the scientist who first described the species, asserts that the Heller Cave springtail is endemic to Heller Cave in Huntingdon County, Pennsylvania (Petition, p. 5; Christiansen and Wang 2006, p. 93). The type locality (location where the type specimen was collected), Heller Cave #5, is one of nine caves in a cave complex (Petition, p. 7) spanning the Blair-Huntingdon County line. The type specimen was collected within the cave on a pool surface (Christiansen and Wang 2006, p. 94). However, information in our files suggests that it may not be reasonable to automatically assume the species is solely endemic to Heller Cave. Discussion between Joseph Reznik, a springtail expert from the Carnegie Museum of Natural History, and Betsy Leppo, an invertebrate zoologist with the Pennsylvania Natural Heritage Program (PNHP), indicates that there is uncertainty about previous assumptions regarding the species' aquatic nature and cave endemism (Leppo 2010, pp. 1–2). In an electronic mail message to PNHP staff, the springtail expert stated ''Many species of springtails that have been attributed to being cave endemics have been classified being endemic based on physical characteristics (i.e., loss of pigment, eyes, etc.), but many soil species also have these characteristics,'' and suggested that Heller Cave springtail surveys be conducted in the scree and talus environments outside of Heller Cave (Leppo 2010, p. 2). We are unaware of whether PNHP or Pennsylvania Game Commission (PGC) conducted further surveys for Heller Cave springtail outside of the species' type locality.

We have no information about the Heller Cave springtail's habitat outside of the type locality, diet, reproduction, or population size. Inferring information from other springtails may not be fully reliable, as some of these characteristics within the Collembola Order vary widely. For example, Christiansen (1992, p. 2) states Collembola ''occur almost everywhere from the tops of the tallest trees to the deepest soil strata where life occurs. They are in fact found everywhere life of any sort is found except the open ocean or below surface in bodies of freshwater.'' As for diet, some species eat plant material, others eat micro-organisms, and some exhibit cannibalistic traits and eat their own eggs (Christiansen 1992, p. 4; Bellenger et al. 1996, pp. 2–3). In general, Collembola exhibit sexual differentiation (male and female individuals), and reproduction occurs through the deposition and reception of spermatophores (sperm packets); eggs are laid; and molting occurs during growth (Christiansen 1992, pp. 4–5). Christiansen and Wang (2006, p. 93) did collect both male and female individuals in Heller Cave #5. None of the readily available information sources indicate what a typical population size for Collembola species may be, and no typical population size is available specifically for the Heller Cave springtail.

The species was formerly described by Christiansen and Wang (2006, entire). We do not have any information in our files that indicates controversy with the species' taxonomy; therefore, at this time we are recognizing the Heller Cave springtail as a valid species.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the Heller Cave springtail, as presented in the petition and other information available in our files is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioner states that a proposed limestone quarry in Blair County, Pennsylvania, would significantly modify or destroy the Heller Caves complex, the only known location of the Heller Cave springtail (Petition, p. 10). The petitioner states that in June 2010, ''* * * the Pennsylvania Department of Environmental Protection [DEP], Bureau of Mining and Reclamation, issued a small non-coal mining permit to Catherine Properties, LLC, for a project at and around the Heller Caves site. This permit allows logging, road building, and removal of up to 10,000 tons per year of rock and other surface materials (Pennsylvania DEP 2010a)'' (Petition, p. 10). The petitioner also states that ''even if a quarry does not completely obliterate a cave, it can cause significant harm to cave habitat in several ways,'' including structural damage; changes in temperature, humidity, water quality, and water quantity; and trampling of flora and fauna, littering, and introduction of foreign substances through increased human access (Petition, pp. 12–14). The petitioner asserts that these impacts are particularly problematic for cave

obligate species like the Heller Cave springtail (Petition, p. 12).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner's assertion that the limestone quarry (i.e., mine) proposed for operation in Blair County, Pennsylvania, near the Heller Caves complex will remove a significant amount of rock, is corroborated by readily available information within the Service's files (Secor 2006a, entire; Secor 2006b, entire; Service 2006, entire; Service 2009, entire; Stormer 2009, entire; U.S. Department of Agriculture (USDA) 2010, entire; Stormer 2010a, entire; Stormer 2010b, entire). The amount of total acreage of the proposed site varies from 5 to 187 acres (2 to 76 hectares (ha)), and the acreage and potential location of disturbance varies from 5 to 7.4 acres (2 to 3 ha) inside or outside of the Heller Caves core area, depending upon the source of the information (Secor 2006a, p. 1; PADEP 2009, p. 1; Service 2009, p. 1; Stormer 2009, p. 1; USDA 2010, pp. 1, 4; Stormer 2010a, p. 1; Stormer 2010b, p. 1; Turner 2010, p. 1; Petition, p. 11). We do not have readily available copies of the permit request from Gulf Trading and Transport (sometimes alternatively known as Catherine Properties or General Trade Corporation) including the scope of, and specific activities associated with, a small or large non-coal mining operation, the approved permit from PADEP, or PGC's comments on the proposed permit to be able to state the actual recorded site and disturbance acreages.

We have limited information on the project's proposed impacts to the area. We only have project information regarding the potential size, county location, and land clearing (e.g., forestry) activities provided to us when we conducted three separate project analyses for potential impacts to the federally listed northeastern bulrush (*Scirpus ancistrochaetus*) (Service 2006, p. 2) and the Indiana bat (*Myotis sodalis*) (Service 2006, pp. 1–2; Service 2009, p. 1; Service 2010, pp. 1–2). Indiana bats are not found in the Heller Caves complex (Western Pennsylvania Conservancy (WPC) 2006, entire; Turner 2010, p. 1). The Service has jurisdiction over federally listed species, so our review and analyses were conducted within that jurisdictional constraint. We did not have information about, or recommendations for, either the eastern small-footed bat or the Heller Cave springtail during the 2006, 2009, and 2010 project reviews.

Because we do not have readily available, project-specific information about the proposed Heller Cave mine project beyond the potential project size, county location, and impacts to Indiana bat habitat from forestry clearing we used in the 2006, 2009, and 2010 reviews, we cannot assess the accuracy of the petitioner's mining operation project details (Petition, pp. 10–12). If the petitioner's information is correct about blasting activities being a part of the small (or large) non-coal mining permit (Petition, p. 11), the potential effects of the blasting activity may impact the Heller Cave springtail. The Heller Caves complex is identified in a Blair County planning document as core habitat for eastern small-footed bat (*Myotis leibii*) winter hibernation (Western Pennsylvania Conservancy (WPC) 2006, p. 46). The Heller Cave springtail co-occurs in the Heller Cave #5 with the eastern small-footed bat. The Blair County planning document states ''Blasting or other activities that disrupt bedrock within the core areas may damage the structure of the cave, potentially making it unsuitable for the bats,'' and recommends ''blasting and other activities that will affect the bedrock should be avoided within this [core habit] area so as not to damage the cave in use as a hibernation site (WPC 2006, p. 47). Because the Heller Cave springtail co-occurs with the eastern small-footed bat, the potential negative impacts of blasting activities at or around the Heller Cave complex previously documented for the eastern small-footed bat may also have potential negative impacts to the Heller Cave springtail, particularly if the blasting activity causes damage to the structure of Heller Cave #5 such that the cave collapses or facilitates changes in temperature, humidity, water quality, or water quantity. Therefore, we conclude that information in the petition and readily available in our files indicates that quarrying activities may be a threat to the Heller Cave springtail and its habitat.

Summary of Factor A—In summary, information in the petition and readily available in our files indicates that the present or threatened destruction, modification, or curtailment of its habitat or range through impacts associated with limestone quarry operations may be a threat to the Heller Cave springtail.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petitioner did not provide any information on overutilization of the Heller Cave springtail.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files to suggest overutilization may be a threat to the Heller Cave springtail.

Summary of Factor B—In summary, information in the petition and readily available in our files does not indicate that overutilization for commercial, recreational, scientific or educational purposes may be a threat to the Heller Cave springtail. However, whether this factor is a threat to the species will be further investigated during our 12-month status review.

C. Disease or Predation

Information Provided in the Petition

The petitioner did not provide any information on disease or predation of the Heller Cave springtail.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files to suggest disease or predation may be a threat to the Heller Cave springtail.

Summary of Factor C—In summary, information in the petition and readily available in our files does not indicate that disease or predation may be a threat to the Heller Cave springtail. However, whether this factor is a threat to the species will be further investigated during our 12-month status review.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioner makes three separate inadequacy of existing regulatory mechanism assertions. First, the petitioner asserts that the Heller Cave springtail has no protective status at the local, State, or Federal level and, therefore, current regulatory mechanisms are inadequate to protect it (Petition, p. 14). The petitioner further states that even if the Heller Cave springtail was State-listed or a species of concern, those protective statuses would likely provide inadequate protection. This assertion is based on the petitioner's assessment that the PADEP issued the small, non-coal mining permit despite the documented presence of the eastern small-footed bat,

a State-designated threatened species, in Heller Cave (Petition, p. 15). Second, the petitioner asserts that recognition of the Heller Caves complex as a ''Biological Diversity Area'' and ''Important Bird Area'' is insufficient to regulate protection of the species (Petition, p. 15). Third, the petitioner asserts that the State's current environmental review and permitting process failed to protect the Heller Cave springtail (Petition, p. 16).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner's first assertion is that the Heller Cave springtail is not a protected species under current regulatory mechanisms at the local, State, and Federal level, and therefore, those mechanisms are inadequate to protect the species (Petition, p. 14). The petitioner states that since there is a lack of regulatory recognition for the species ''no deliberate program for its conservation can or has been instituted'' (Petition, p. 15).

The petitioner's second assertion is that recognition of the Heller Caves complex as a ''Biological Diversity Area'' and ''Important Bird Area'' is insufficient to regulate protection of the Heller Cave springtail (Petition, p. 15). A Biological Diversity Area (BDA) is defined as ''An area containing plants or animals of special concern at State or Federal levels, exemplary natural communities, or exceptional native diversity. BDAs include both the immediate habitat and surrounding lands important in the support of these special elements'' (WPC 2006, p. 6). The BDAs are used in conservation planning to ''identify core areas that delineate essential habitat that cannot absorb significant levels of activity without substantial impact to the elements of concern'' (WPC 2006, p. 6). An Important Bird Area (IBA) is defined as ''a site that is part of a global network of places recognized for their outstanding value to bird conservation'' with application for conservation planning to maintain the areas for valuable bird habitat (WPC 2006, p. 6). The Heller Caves complex site is ranked as a BDA of high significance because it provides a ''winter hibernation site for bat colonies, including the state and global-concern species eastern small-footed myotis'' (WPC 2006, p. xi). The BDA and IBA designations are nonregulatory community planning tools. The petitioner concedes that ''designation as a BDA confers no regulatory protection'' (Petition, p. 15).

Third, the petitioner asserts that the State's current environmental review and permitting process failed to protect the Heller Cave springtail or its habitat (Petition, p. 16). The proposed Heller Cave limestone mine project overlaps the Heller Caves BDA. The Heller Caves BDA contains the eastern small-footed bat and the Heller Cave springtail (Petition, p. 16; WPA 2006, p. 46). The eastern small-footed bat is a State-listed species and falls under the PGC's jurisdiction. The Heller Cave springtail is neither a federally or State-listed invertebrate nor a State species of concern (Shellenberger 2010, p. 1; Leppo 2010, p. 1). Information in our files at the time of the petition's receipt indicates uncertainty as to whether the Heller Cave springtail is a true aquatic invertebrate and, therefore, falls under the PA Fish and Boat Commission's jurisdiction, or whether it is a terrestrial invertebrate and therefore falls under PNHP's jurisdiction (Leppo 2010, p. 1). The Service is unaware of which State agencies the PADEP contacted to review the mine project for impacts to the Heller Cave springtail.

The PGC was contacted to review the project for possible impacts to the eastern small-footed bat (Petition, p. 11; Shellenberger 2010, p. 1). According to the Petition (p. 15), the PGC recommended a ''Total Avoidance Area'' around Heller Cave because the proposed quarrying project is likely to disturb or destroy winter and summer bat habitat. The petitioner did not provide PGC's comments on the mining project to the Service as part of the Petition's references, and those comments are not readily available to the Service. We have no readily available information to confirm the Petition's assertion that the existing environmental review and mine permitting processes may be inadequate to protect the Heller Cave springtail or its habitat, through the surrogacy of the eastern small-footed bat. Based on review of the Petition's information, we conclude that the Petition indicates that the existing permit processes may be inadequate to protect the Heller Cave springtail.

Summary of Factor D—In summary, information in the petition and readily available in our files indicates that inadequate regulatory mechanisms for (1) Factor A—the present or threatened destruction, modification, or curtailment of the species' habitat caused by the proposed limestone quarry or its mining operations; and (2) Factor E (see below)—other natural or manmade factors affecting its continued existence caused by mortality from the proposed limestone quarry's rock removal and blasting operations may be a threat to the Heller Cave springtail.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioner states that three anthropogenic factors are threats to the Heller Cave springtail: (1) Direct mortality as a result of rock removal and blasting, (2) cave vandalism and direct human-caused mortality, and (3) climate change (Petition, pp. 16–17).

Evaluation of Information Provided in the Petition and Available in Service Files

The petitioner first asserts, with no supporting information, that the Heller Cave springtail is threatened from ''direct take'' (i.e., mortality) as a result of the proposed limestone quarry's rock removal and blasting operations (Petition, p. 16). Information in our files suggests that some of the proposed quarry activities may occur outside of the Heller Cave core area (Stormer, 2010a, p. 1; Turner, 2010, p. 1; Shellenberger 2010, p. 1). However, our information does not state how much of the quarry operations or what type (i.e., blasting vs. land clearing) of quarry operations may occur outside of the Heller Cave core area. If blasting and rock removal activities take place within the Heller Cave core area, including Heller Cave #5—the type locality for the Heller Cave springtail and hibernacula site of the eastern small-footed bat—those activities as described in the petition may impact the Heller Cave springtail (Petition, pp. 10–14). Blasting and rock removal activities may destabilize the cave site (WPC 2006, pp. 46). If the cave destabilizes to the point that collapsing material falls on the locations where the Heller Cave springtail specimens were collected, then direct mortality may occur. We conclude that direct mortality could occur from rock removal and blasting if those activities occur within or very near the Heller Caves complex.

The petitioner further asserts that the Heller Cave springtail is threatened by cave vandalism and intentional human-caused mortality. The petitioner does not provide information to support this assertion, merely stating that ''it is possible that one or more attempts could be made to obliterate this unique species'' prior to protection under the Act (Petition, p. 17). We do not have any information in our files to indicate that this intentional harm may be a specific threat to the Heller Cave springtail. We are not aware of specific vandalism instances for eastern small-footed bat hibernacula in Pennsylvania or for the Heller Caves complex. Therefore, it is unlikely that the cave site itself may be

subjected to vandalism. However, we will fully investigate whether intentional cave disturbance or vandalism is a threat to the Heller Cave springtail and its habitat in our 12-month status review.

The petitioner lastly asserts that ''climate change may be affecting the Heller Cave springtail at this time, or it may in the future'' (Petition, p. 17). The petitioner cites three documents in this section, only one of which can be assessed for accuracy. Of the other two, the Natural Resource Council 2006 citation does not relate to the information for which it is used as a citation. The Toomey and Nolan 2005 citation is not included in the petitioner's list of literature cited and consequently could not be quickly searched for or located. The petitioner did not include copies of the references. The petitioner's third citation is a Service (2011, p. 1) blog post about climate change and its impacts on Indiana bat conservation efforts, which includes a bat biologist quoted as saying ''Surface temperature is directly related to cave temperature, so climate change will inevitably affect the suitability of hibernacula'' (Petition, p. 17).

We have general information in our files indicating that climate change is occurring. The Fourth Assessment Report: Climate Change 2007, prepared by the Intergovernmental Panel on Climate Change (IPCC), presents credible science on global climate change. The IPCC concludes that warming of the climate system is unequivocal, as evidenced by observations of increasing global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (IPCC 2007, p. 2). The warming trend is expected to continue as a result of a projected increase of global greenhouse gas emissions by 25 to 90 percent from 2000 to 2030, which would be greater than the change observed during the 20th century (IPCC 2007, p. 7). Although there is some uncertainty regarding the mechanics of climate change and how much temperatures will change, the projected global average surface increase is estimated to range from 1.1 °C to 6.4 °C (2.0 °F and 11.5 °F) in 2090 to 2099 over the temperatures observed during the 19-year period of 1980 to 1999 (IPCC 2007, p. 8).

We do not have any readily available information as of the petition's receipt that further refines the IPCC's (2007, entire) conclusions at regional or local scales to allow us to assess whether, or to what extent, the Heller Cave springtail may be impacted by climate change. The petitioner acknowledges that how regional climate change may impact the Heller Cave springtail is unknown (Petition, p. 17) but suggests the Heller Cave springtail ''would be highly vulnerable to climate-related shifts in its physical environment'' because it is an ''extremely range-limited cave obligate'' species. As discussed above in the *Species Information* section, information in our files raises uncertainty as to whether the Heller Cave springtail may occur only within Heller Cave, and by extension whether the species is a cave obligate (Leppo 2010, p. 2). Because of the high levels of uncertainty in regional or local scale climate change impacts and the uncertainty of the Heller Cave springtail's cave endemism, we cannot reasonably state that climate change may be a threat to the species. However, we will fully investigate the potential effects of climate change on the Heller Cave springtail in our 12-month status review.

Summary of Factor E—In summary, information in the petition and readily available in our files indicates that direct take as a result of the proposed limestone quarry's rock removal and blasting operations may be a threat to the Heller Cave springtail, but does not indicate that intentional take from cave disturbance and vandalism or from climate change may be a threat to the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Heller Cave springtail throughout its entire range may be warranted. This finding is based on information provided under factors A, D, and E. We determine that the information provided under factors B and C is not substantial.

Because we have found that the petition presents substantial information indicating that listing the Heller Cave springtail may be warranted, we are initiating a status review to determine whether listing the Heller Cave springtail under the Act is warranted.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Northeast Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Northeast Regional Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 20, 2012.

Benjamin Tuggle,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–27573 Filed 11–13–12; 8:45 am]

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Notices

Federal Register
Vol. 77, No. 220
Wednesday, November 14, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomics of Commercial Fishers and For Hire Diving and Fishing Operations in the Flower Garden Banks National Marine Sanctuary.

OMB Control Number: 0648–0597.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 27.

Average Hours per Response: 3.

Burden Hours: 80.

Needs and Uses: This request is for an extension of a currently approved information collection.

The National Marine Sanctuaries Act (16 USC 1431, *et seq.*) authorizes the use of research and monitoring within National Marine Sanctuaries (NMS). In 1996, the Flower Gardens Bank National Marine Sanctuary (FGBNMS) was added to the system of NMS via 15 CFR part 922, subpart L. In 2001, Stetson Bank was added in a revision of 15 CFR part 922.

The National Marine Sanctuaries Act (NMSA) specifies that each NMS should revise their management plans on a five-year cycle. The FGBNMS has begun the management plan review process. The NMSA also allows for the creation of Sanctuary Advisory Councils (SACs). SACs are comprised of representatives of all NMS stakeholders. Management Plan Review (MPR) is a public process and the SACs, along with a series of public meetings, are used to help scope out issues in revising the management plans and regulations. SAC Working Groups are often used to evaluate management or regulatory alternatives. In the current MPR for the FGBNMS, two major issues have emerged: Boundary expansion and research-only areas. In addition, several new or modified regulations are being considered to meet specific needs for diver safety and resource protection (no anchoring/mooring buoy use requirement and a more stringent pollution discharge regulation).

To address each one these issues, a socioeconomic panel composed of NOAA staff and social scientists from other agencies, or from universities, developed information and tools to assess the socioeconomic impacts of management strategies and regulatory alternatives. The information and tools developed in this process will also provide the necessary information for meeting agency requirements for socioeconomic impact analyses under the National Environmental Policy Act (NEPA), Executive Order 12086 (Regulatory Impact Review) and an Initial and Final Regulatory Flexibility Analyses (impacts on small businesses). Our initial plan, as the first step in the assessment process, was to interview three key sanctuary user groups—commercial fishers, for-hire recreational dive operations and for-hire recreational fishing operations (charter and party/head boat operations)—with questions focusing on: (1) general information, economic information and trip costs and (2) knowledge, attitudes and perceptions of sanctuary management strategies and regulations.

In 2011–2012, the for-hire dive and fishing industry interviews were completed. The commercial fisheries interviews were not begun due to lack of funding; we have the funding now and expect to complete these interviews. The for-hire dive and fishing industries are dynamic with entry and exit of businesses. We estimate the possibility of up to four new businesses over the next three years.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at JJessup@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: November 8, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–27621 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812, C–357–813]

Honey From Argentina; Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent To Revoke Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 14, 2012.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–8029 or (202) 482–3019, respectively.

SUMMARY: On October 2, 2012, in response to a request by domestic producers of the subject merchandise, the Department of Commerce (the Department) published a notice of initiation of changed circumstances reviews of the antidumping and countervailing duty orders on honey from Argentina.[1] In the *Initiation Notice,* we invited interested parties to comment on the Department's initiation.

[1] *See Honey from Argentina: Notice of Initiation of Antidumping and Countervailing Duty Changed Circumstances Reviews and Consideration of Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 60105 (October 2, 2012) (*Initiation Notice*).

We received no comments from domestic parties. Therefore, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which these orders pertain lack interest in the relief provided by the antidumping and countervailing duty orders. Accordingly, we are notifying the public of our preliminary intent to revoke the antidumping duty order, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after December 1, 2010, and the countervailing duty order, in whole, with respect to products entered, or withdrawn from warehouse, for consumption on or after December 1, 2011, because domestic parties have expressed no interest in the continuation of the orders after these dates.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping and countervailing duty orders on honey from Argentina.[2] On July 24, 2012, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested that the Department revoke the *AD Order,* effective December 1, 2010, based on the domestic U.S. industry's lack of further interest.[3] On August 22, 2012, the petitioners requested that the Department revoke the *CVD Order,* effective December 1, 2011, again based on their lack of further interest in these proceedings.[4]

On October 2, 2012, the Department published a notice of initiation of changed circumstances reviews of the *Orders* on honey from Argentina.[5] In the *Initiation Notice,* we invited interested parties to comment on the Department's initiation. We did not receive comments from any interested party expressing opposition to the changed circumstances reviews nor to the possible revocation of the *Orders.*

[2] *See Notice of Antidumping Duty Order: Honey from Argentina,* 66 FR 63672 (December 10, 2001) (*AD Order*) and *Notice of Countervailing Duty Order: Honey from Argentina,* 66 FR 63673 (December 10, 2001) (*CVD Order*), (collectively, *Orders*).

[3] *See* Letter from Petitioners, entitled ''Request for 'No Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina,'' dated July 24, 2012 (CCR Request).

[4] *See* Letter from Petitioners, entitled ''Supplement to Petitioners' Request for a 'No-Interest' Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Honey from Argentina,'' dated August 22, 2012 (Supplemental CCR Request).

[5] *See Initiation Notice.*

Scope of the Orders

The merchandise covered by the orders is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the orders is dispositive.

Preliminary Results of Reviews and Intent To Revoke, in Whole, the Orders

Pursuant to section 751(d)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.222(g), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives the Department the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the continuation of the order. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Both the Act and the Department's regulations require that ''substantially all'' domestic producers express a lack of interest in the order(s) for the Department to revoke.[6] The Department has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.[7]

As noted above and in the *Initiation Notice,* the petitioners requested the revocation of these orders because they are no longer interested in maintaining the *Orders* or in the imposition of duties on the subject merchandise as of December 1, 2010 (AD), and December 1, 2011 (CVD). Because the Department did not receive any comments during the comment period opposing initiation of the changed circumstances review of the *Orders* on honey from Argentina, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product, to which these orders pertain, lack interest in the relief provided by the *Orders.*

In accordance with 19 CFR 351.222(g), the Department preliminarily determines that there is a reasonable basis to believe that changed circumstances exist sufficient to warrant revocation of the *Orders.* Therefore, the Department is notifying the public of its preliminary intent to revoke the *Orders* on honey from Argentina, in whole.

Unless the Department receives opposition within the time limit set forth below from domestic producers whose production, cumulatively, totals more than 15 percent of the domestic like product, the Department will revoke the *Orders* on honey from Argentina in its final results of review. If, as a result of these reviews, we revoke the *Orders,* we intend to instruct U.S. Customs and Border Protection (CBP) to terminate suspension of liquidation effective December 1, 2010, for the *AD Order,* and December 1, 2011, for the *CVD Order.* The suspension of liquidation of estimated antidumping and countervailing duties on the subject merchandise will continue as appropriate for the period December 1, 2010, through August 2, 2012, and December 1, 2011, through August 2, 2012, respectively, unless, and until, we publish a final determination to revoke the *Orders* in whole.[8] There is no requirement for a cash deposit of estimated antidumping and

[6] *See* section 782(h) of the Act and 19 CFR 351.222(g).

[7] *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 73 FR 60241, 60242 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 74 FR 4733 (January 27, 2009); *see also* 19 CFR 351.208(c).

[8] The Department revoked the *Orders* under five-year sunset reviews on September 21, 2012, pursuant to 19 CFR 351.218(d)(1)(iii), effective August 2, 2012. *See Honey From Argentina; Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders,* 77 FR 58524 (September 21, 2012).

countervailing duties on the subject merchandise for entries on or after August 2, 2012, pursuant to the recent sunset of the *Orders*.[9]

Public Comment

Interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[10] Rebuttal briefs, which must be limited to issues raised in such case briefs, may be filed not later than 19 days after the date of publication of this notice.[11] Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Any interested party may request a hearing within 7 days of publication of this notice.[12] Any hearing, if requested, may be held 21 days after the date of publication of this notice, or the first working day thereafter, as practicable. Consistent with 19 CFR 351.216(e), we will issue the final results of these changed circumstances reviews not later than 270 days after the date on which these reviews were initiated.

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216, 351.221(c)(3), and 351.222.

Dated: November 5, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–27678 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 14, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lindsey Feldman, (978) 675–2179 or *Lindsey.Feldman@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision and extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect information from users of the resource.

As regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance of permits to individuals and organizations participating in Federally controlled fisheries in order to: (1) Register fishermen, fishing vessels, fish dealers and processors, (2) List the characteristics of fishing vessels and/or dealer/processor operations, (3) Exercise influence over compliance (e.g. withhold issuance pending collection of unpaid penalties), (4) Provide a mailing list and email list for the dissemination of important information to the industry, (5) Register participants to be considered for limited entry, and (6) Provide a universe for data collection samples. Identification of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations.

Limited access fishing permits, where entry is reviewed during a one-time application period, place size, tonnage, and horsepower restrictions on the ability of a vessel owner to upgrade or replace their vessel. If a vessel owner wishes to upgrade any of the specifications of his/her vessel such as length overall, net tonnage, gross tonnage, horsepower, or vessel fish hold capacity, he/she must submit, in writing, a request for a vessel upgrade. A request, in writing, also must be made in order to replace one limited access permitted vessel with another as vessel size restrictions are limited to 10-percent above the baseline length overall, gross, and net tonnage, 20-percent above the baseline horsepower, and 10-percent above the vessel hold capacity measurement for limited access vessels with Tier 1 or 2 Atlantic mackerel permits.

Vessels with particular permits are also required to use an electronic vessel monitoring system (VMS) to declare their intent to fish before starting a particular trip, change their intent to fish during a trip, and to report real-time catch and discard information. While vessels are also required to report catch information weekly or monthly depending on their permit through vessel trip reports (VTRs)(VTR collection approved in OMB Control No. 0648–0212), it is often necessary to have daily catch reporting in order to have a real-time understanding of the operation of the fishery. Real-time catch reporting is especially important for high volume fisheries, where large amounts of fish are landed in short periods of time, so that the fishery can be shut down when approaching the annual, regional, or seasonal quota.

This collection also includes the requirement of participants in certain fisheries to notify NMFS before fishing trips for the purpose of observer placement. The placement of fisheries observers is critical to accurately monitoring and collecting information on fish catch, discards, gear performance, socio-economic information about vessel crew and operations, etc. Vessels are also required to request, in writing, participation in any of the various exemption programs offered in the Northeast region. Exemption programs may allow a vessel to fish in an area that is limited to vessels of a particular size, using a certain gear type, or fishing for a particular species. Vessels are also required to request gillnet and lobster tags through the Northeast region permit office when using gillnet gear or lobster traps. Lastly, vessel owners that own multiple vessels, but would like to request communication from NMFS be consolidated into one mailing (and not separate mailings for each vessel), may request the single letter vessel owner option to improve efficiency of their business practice.

[9] *Id.*

[10] *See* 19 CFR 351.309(c)(ii).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.310(c).

This revision/extension removes the expedited submission of proposed special access programs (SAPs), days-at-sea (DAS) transfer program requirements, and Northwest Atlantic Fisheries Organization (NAFO) reporting requirements to avoid duplication, as this information has been moved to another collection (OMB Control No. 0648–0605).

II. Method of Collection

Vessel Permits

All vessel permit applications including initial permit applications for vessels and dealers, vessel and dealer renewal applications, vessel operator permit applications, gillnet and lobster trap tag purchase are submitted by signed paper form sent in the mail.

VMS Requirements

Vessels with VMS requirements are required to declare their intent to fish (i.e. declare into the fishery) and submit daily catch reports using electronic VMS units on board the vessel. VMS power down exemption requests are submitted by signed paper form.

Observer Program Call-In Requirements

Vessels issued certain permits such as NE multispecies, monkfish, scallop, and Atlantic herring permits are required to give advance notification to the Northeast Fisheries Observer Program (NEFOP) before the start of a trip in order to receive a fisheries observer or a waiver. Vessels use an online pre-trip notification system, email, toll-free call in number, or a local phone number to comply with this requirement.

Exempted Fisheries Programs

Vessels that would like to request participation in one or more of the NE fisheries exemption programs must either submit a request electronically using their VMS unit, by declaring into an exempted fishery prior to the start of a trip, or by mailing in a written request to participate in the program(s) of interest.

Vessel Owner Single Letter Option

Vessel owners that own multiple vessels, but would like to receive only a single NE Fisheries Bulletin or small entity compliance guide instead of one for each vessel permit, must submit a request, in writing, to NMFS to participate in this program.

III. Data

OMB Control Number: 0648–0202.

Form Number: None.

Type of Review: Regular submission (revision and extension of a current information collection).

Affected Public: Businesses or other for-profit organizations; Individuals or households, state, local or tribal government, and Federal Government.

Estimated Number of Respondents: 62,295.

Estimated Time Per Response:

Vessel Permits

Vessel permit application: 45 minutes; Vessel permit renewal forms: 30 minutes; Initial dealer permit applications: 15 minutes; Dealer permit renewal forms: 5 minutes; Initial and renewal vessel operator permit applications: 1 hour; Obtaining and submitting a dealer or vessel owner email address: 5 minutes; Limited access vessel upgrade or replacement applications: 3 hours; and Applications for retention of limited access permit history: 30 minutes.

VMS Requirements

Installing a VMS unit: 1 hour; Confirming VMS connectivity: 5 minutes; VMS certification form: 5 minutes; VMS installation for Canadian herring transport vessels: 1 hour and 20 minutes; Email to declare their entrance and departure from U.S. waters: 15 minutes; Automatic polling of vessel position using the VMS unit: 0 minutes; Area and DAS declarations: 5 minutes; Declaration of days-out of the gillnet fishery for monkfish and NE multispecies vessels: 3 minutes; Departure and landing notification for monkfish and occasional sea scallop vessels using the Interactive Voice Response (IVR) system: 2 minutes; Good Samaritan DAS credit request: 30 minutes; Entangled whale DAS credit request: 30 minutes; DAS credit for a canceled trip due to unforeseen circumstances, but have not yet begun fishing: 5 minutes to request via the VMS unit and 10 minutes to request via the paper form; VMS catch reports for trips in NE multispecies broad stock areas: 15 minutes; All other NE multispecies VMS reporting requirements, such as U.S. Canada Area, Closed Area II Special Access Programs, etc: 15 minutes; VMS catch reports by Atlantic herring vessels: 7 minutes, VMS power down exemption: 30 minutes.

Observer Program Call-In Requirements

Requests for observer coverage are estimated to require either 2 or 10 minutes per request, depending on the program for which observers are requested.

Exempted Fisheries Programs

Letter of Authorization (LOA) to participate in any of the exemption programs: 5 minutes; Charter/Party Exemption Certificate for GOM Closed Areas: 2 minutes; Limited access sea scallop vessels state waters DAS exemption program or state waters gear exemption program: 2 minutes; Withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement: 2 minutes; Request for change in permit category designation: 5 minutes; Request for transit to another port by a vessel required to remain within the GOM cod trip limit: 2 minutes; Gillnet category designation, including initial requests for gillnet tags: 10 minutes; Requests for additional tags: 2 minutes; Notification of lost tags and requests for replacement tag numbers: 2 minutes; Attachment of gillnet tags: 1 minute; Initial lobster area designations: 5 minutes; Requests for additional tags: 2 minutes; and notification of lost tags: 3 minutes; Requests for state quota transfers in the bluefish, summer flounder and scup fisheries: 1 hour; GOM cod trip limit exemption: 5 minutes; Vessel owner single letter option: 5 minutes.

Estimated Total Annual Burden Hours: 28,748.

Estimated Total Annual Cost to Public: $5,828,067 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–27596 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC341

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for six new scientific research permits, one permit modification, and one permit renewal.

SUMMARY: Notice is hereby given that NMFS has received eight scientific research permit application requests relating to Pacific salmon, the southern distinct population segment of eulachon, and Puget Sound/Georgia Basin rockfish. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on December 14, 2012.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by email to *nmfs.nwr.apps@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rob Clapp, Portland, OR (ph.: 503–231–2314), Fax: 503–230–5441, email: *Robert.Clapp@noaa.gov.* Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Puget Sound (PS); threatened upper Willamette River (UWR); threatened lower Columbia River (LCR); endangered upper Columbia River (UCR); threatened Snake River (SR) spring/sum (spr/sum); threatened SR fall.

Steelhead (*O. mykiss*): Threatened PS; threatened UWR, threatened LCR; threatened UCR; threatened SR; threatened middle Columbia River (MCR).

Chum salmon (*O. keta*): Threatened Hood Canal (HC) summer-run, threatened Columbia River (CR).

Sockeye salmon (*O. nerka*): Threatened Ozette Lake (OL); endangered SR.

Coho salmon (*O. kisutch*): Threatened LCR.

Rockfish: Puget Sound/Georgia Basin (PS/GB) bocaccio (*Sebastes paucispinis*); PS/GB canary rockfish (*Sebastes pinniger*), and PS/GB yelloweye rockfish (*Sebastes ruberrimus*).

Eulachon: The southern Distinct Populations Segment (DPS) of pacific eulachon (*Thaleichthys pacificus*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 10020–2R

The City of Bellingham (COB) is seeking to renew for five years a research permit that currently allows them to take juvenile PS Chinook salmon and PS steelhead. The sampling would take place in Cemetery Creek, a tributary of Whatcom Creek in Bellingham, WA. The purpose of the study is to assess the effectiveness of habitat restoration measures implemented as part of the Whatcom Creek Long-term Restoration Plan by documenting fish population trends. This research would benefit the affected species by informing future restoration designs as well as providing data to support future enhancement projects. The COB proposes to capture fish using a smolt trap placed in Cemetery Creek. Fish would be identified by species and measured, have a tissue sample taken (to determine their origin), and be released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 16303

The University of Washington (UW) is seeking a five-year research permit to annually take juvenile and adult PS Chinook salmon, HCS chum salmon, PS steelhead, and PS/GB bocaccio. The UW research may also cause them to take the following species for which there are currently no ESA take prohibitions: Southern DPS of Pacific eulachon, PS/GB canary rockfish, and PS/GB yelloweye rockfish. Sampling would take place throughout Puget Sound and the Strait of Juan de Fuca. The purpose of the study is to determine the timing and magnitude of size-selective mortality and other factors that affect growth and survival during the early marine growth period for salmon. This research would benefit the affected species by shedding light on the relationship between salmonid marine mortality, body size, and abundance and thus aid management and guide recovery efforts for various salmonid populations. The UW proposes capturing fish by mid-water trawl, beach seine, and purse seine. The mid-water trawling would be conducted by Canadian Department of Fisheries and Oceans (CDFO) research vessels using a mid-water rope trawl during daylight at various depths and velocities. The mid-water trawl surveys would be coordinated with surveys in Canadian waters. The beach seining and purse seining are designed generate data on critical life stages for different stocks and species of salmon, relate stage-specific size and growth to smolt-adult returns ratios, and increase our understanding of the underlying mechanisms that affect growth at these life stages. During the mid-water trawls, the fish would be identified by species, weighed, measured for length, and checked for coded wire tags (CWTs). Viable adult salmon and rockfish would be released. Any juvenile salmon that suffer lethal injuries would be further sampled for CWTs, scales, fins, stomach contents, and otoliths. During the beach and purse seining, the fish would be anesthetized, identified by species, checked for CWTs, sampled for stomach contents and scale and fin tissues, and released. All juvenile CWT fish would be intentionally sacrificed to determine their origins. The researchers do not propose to kill any other captured fish, but a small number may die as an unintended result of the activities.

Permit 16784

Environ International Corporation (Environ) is requesting a one-year scientific research permit to take juvenile SR fall Chinook salmon, SR spr/sum Chinook salmon, UCR Chinook salmon, UWR Chinook salmon, LCR Chinook salmon, CR chum salmon, LCR coho, SR sockeye salmon, SR steelhead, UCR steelhead, MCR steelhead, LCR steelhead, and UWR steelhead. The objective of the research is to study the degree to which juvenile salmonids may be getting stranded by ship wakes along the lower Columbia River between river mile 21 and 102. The researchers would investigate the potential for stranding at approximately 24 ''high risk'' sites. The researchers would also evaluate whether the strategic placement of dredged material could reduce the risk of stranding. The research would benefit the listed species by helping river managers determine the likelihood of juvenile stranding along the lower river and investigate potential means for reducing it. Environ would use beach seines to capture, handle, and release juvenile fish. Environ may also collect stranded fish and return them to the river. Environ does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 16984

ICF International (ICF) is seeking a five-year research permit to annually take juvenile PS Chinook salmon and PS steelhead. Sampling would take place in the Snohomish River estuary. The purpose of the study is to count listed fish during their peak outmigrations and thereby determine how well habitat has been restored by the Smith Island dike breaching. This research would benefit the affected species by helping guide future estuarine habitat restoration and enhancement projects. The ICF would use hand-held beach seines and dip nets to capture the fish. They would be identified by species, measured, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 17062—2M

The Northwest Fisheries Science Center (NWFSC) is seeking to modify a research permit that currently allows them to annually take adult and juvenile PS Chinook salmon, PS steelhead, and PS/GB bocaccio. The researchers may also take PS/GB canary rockfish and PS/GB yelloweye rockfish—species for which there are currently no ESA take prohibitions. Sampling would take place near the northern islands in the San Juan Island archipelago. The purpose of the study is to determine how much genetic variation exists between coastal and Puget Sound populations of canary and yelloweye rockfish. The research would benefit rockfish by increasing our understanding of the connectivity (or lack thereof) between rockfish populations in the Puget Sound and populations on the outer coast. The NWFSC proposes to capture fish using hook and line equipment at depths of 50–100 meters during slack tides. Fish would slowly be reeled to the surface to reduce barotrauma. All Chinook salmon and steelhead would be immediately released at the capture site. All captured ESA-listed rockfish would have a small portion of their fin tissue removed for genetics studies and be returned to the water via rapid submersion techniques. If an individual of these species is captured dead or deemed nonviable, it would be retained for genetic analysis. The researchers do not propose to kill any of the listed fish being captured, but a small number may die as an unintended result of the activities.

Permit 17258

The Washington State Department of Natural Resources (WDNR) is seeking a five-year research permit to annually take juvenile PS Chinook salmon, HCS chum salmon, PS steelhead, and OL sockeye salmon. Sampling would take place in some of the streams in Clallam, Jefferson and Grays Harbor counties of western Washington. The purpose of the research is to determine the presence of any fish species in streams located on lands managed by WDNR. This research would benefit the affected species by determining which streams with road-related passage barriers contain listed fish and thus allow DNR to focus its resources on road improvements that would best help those species. The WDNR would use backpack electrofishing equipment to conduct the surveys. The shocked fish would be netted, identified by species, and released. In most cases, the stream survey would terminate with the location of one fish. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 17422

Mary Harenda Environmental Consulting (MHEC) is seeking a five-year research permit to annually take juvenile PS Chinook salmon and juvenile and adult PS steelhead. Sampling would take place in the Snohomish River basin. The purpose of the study is to determine fish presence and relative abundance at the Snohomish Basin Mitigation Bank (SBMB) during spring (high flow) and summer (low flow). This research would benefit the affected species by generating information to help guide future salmonid habitat restoration efforts at the SBMB. The MHEC proposes to use beach seines, dip nets, and purse seines to capture the fish. The fish would be identified by species, measured, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

Permit 17451

Hart Crowser, Inc. (HCI) is seeking a five-year research permit to annually take juvenile and adult PS Chinook salmon and PS steelhead. Sampling would take place in the South Fork Sauk River watershed upstream of the confluence with Elliot Creek. The purpose of the study is to monitor and analyze river, stream, and lake conditions during and after the Federal cleanup of the Monte Cristo Mining Area (mined from 1889 to 1907) for the Washington State Department of Ecology to determine future remedial actions. This research would benefit the affected species by documenting aquatic conditions and thereby guiding future actions to improve salmonid habitat. The HCI would use backpack electrofishing equipment, beach seines, hook and line, minnow traps, and gill nets to capture the fish. The fish would be identified by species, measured, and released. The researchers do not propose to kill any of the listed salmonids being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: November 8, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27696 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC342

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of receipt of a permit application; request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit (Permit 15610) to conduct research for scientific purposes from the Oregon State University, Department of Fisheries and Wildlife (OSU). The requested permit would affect the endangered Southern California (SC) Distinct Population Segment (DPS) of steelhead (*Oncorhynchus mykiss*). The public is hereby notified of the availability of the permit application for review and comment before NMFS either approves or disapproves the application.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) on or before December 14, 2012.

ADDRESSES: Written comments on the permit application should be sent to Matt McGoogan, Protected Resources Division, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Comments may also be sent using email *FRNpermits.1b@noaa.gov* or fax (562.980.4027). The permit application is available for review, by appointment, at the foregoing address and is also available for review online at the Authorizations and Permits for Protected Species Web site at *https://apps.nmfs.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Matt McGoogan at phone number (562) 980–4026 or email: *matthew.mcgoogan@noaa.gov.*

Authority

Issuance of permits, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should provide the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Permit Application Received

OSU has applied for a permit (Permit 15610) to study steelhead in the Ventura River watershed in Ventura County, California. The primary objectives of this study are to (1) determine if population genetic structure exists in the steelhead and rainbow trout subpopulations in the Ventura Basin, (2) determine smoltification patterns of steelhead and rainbow trout in the Ventura Basin and influence between the two life history forms, and (3) determine downstream migration patterns for steelhead and rainbow trout and how those patterns may be influenced by environmental conditions. Research activities include (1) Monitoring water temperature, (2) capturing smolts and adult steelhead in a migrant trap at the Robles Diversion Dam, (3) capturing smolts and juvenile steelhead using a seine in the Ventura River estuary, (4) capturing smolts and juvenile steelhead by electrofishing predetermined sample sites throughout the Ventura River watershed, (5) recording weight and length of smolts and juvenile steelhead, (6) removing tissue (gill and fin clip) samples from smolts and juvenile steelhead, (7) analyzing fin clips for genetic structure, (8) analyzing gill samples for ATPase (decomposition of adenosine triphosphate (ATP) into adenosine diphosphate and a free phosphate ion) as an indicator of smoltification, and (9) inserting Passive Integrated Transponder (PIT) tags into smolts and juvenile steelhead. Field activities for the proposed research will occur between December 2012 and May 2014. For the proposed study, OSU has requested non-lethal capture and release of up to 210 juvenile steelhead (30 juvenile steelhead from 7 different sites over the course of 1 year) for the purpose of genetic sampling (fin clip), the capture and release of up to 684 steelhead smolts (342 smolts annually over 2 years of sampling) and 304 juvenile steelhead (152 juvenile steelhead annually over 2 years of sampling) for the purpose of PIT tagging and tissue (gill/ATPase) sampling, capture and release of up to 10 adult steelhead (5 adults annually over 2 years of sampling) for genetic sampling (fin clip), and up to 40 tissue samples (fin clip) from adult steelhead carcasses (20 adult carcasses annually over 2 years of sampling). The unintentional lethal take that may occur as a result of research activities is a total of 9 juvenile steelhead and 16 steelhead smolts. Overall, no intentional lethal take of steelhead is expected in association with any aspect of these research activities. See the permit application for greater details on the study and related methodology.

Dated: November 8, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27665 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC343

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Issuance of a scientific research permit, and notice of availability for final environmental assessment and finding of no significant impact.

SUMMARY: This notice is hereby given that NMFS has issued Permit 14868 to Mr. Robert Clark, Assistant Regional Director of the U.S. Fish and Wildlife Service (FWS), in accordance with the Endangered Species Act of 1973, as amended (ESA). In addition, the Final Environmental Assessment and Finding of No Significant Impact associated with this permit are available to the public.

ADDRESSES: The approved application for the permit is available on the Applications and Permits for Protected

Species (APPS), *https://apps.nmfs.noaa.gov* Web site by searching the permit number within the Search Database page. The application, issued permit, Final Environmental Assessment, Finding of No Significant Impact and supporting documents are also available by appointment, or upon the following:

- *Mail:* Submit written requests to Elif Fehm-Sullivan, Fisheries Biologist, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.
- *Fax:* (916) 930–3629.
- *Email: SJRspring.salmon@noaa.gov.*

You may access a copy of Final EA by one of the following:

- Visit the NMFS Reintroduction Web site at *http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm.*
- Call (916) 930–3723 and request to have a CD or hard copy mailed to you.
- Obtain a CD or hard copy by visiting the NMFS Central Valley office at 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814 (916–930–3723).

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222–226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to ESA listed species from the Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) (spring-run Chinook) evolutionarily significant unit (ESU).

Permit 14868

NMFS formally initiated a public review period for review of the permit application through publication of a Notice of Receipt (NOR) of the Permit application in the **Federal Register** on February 4, 2011, outlining the research and enhancement activities proposed by FWS and take of ESA-listed spring-run Chinook proposed under Permit 14868 (76 FR 64005). The notice of receipt included a 30-day public comment period for this permit application, which closed on March 7, 2011. In addition, NMFS held public workshops for the section 10(a)(1)(A) permit application in Chico, California on February 3, 2011; in Fresno, California on February 7, 2011; and in Los Banos, California on February 8, 2011. A combined total of 113 public comments were submitted to NMFS by various entities on the permit application and each of these comments were considered when drafting the Environmental Assessment (EA).

NMFS formally initiated a public review period for the EA of the permit application through publication of a Notice of Availability (NOA) of the Permit application EA in the **Federal Register** on April 19, 2012, outlining the research and enhancement activities NMFS was proposing to allow under Permit 14868 (76 FR 23463). The notice of availability included a 30-day public comment period for this permit application EA, which closed on May 21, 2012. A combined total of 51 public comments were submitted to NMFS by various entities on the permit application EA and these comments with responses are incorporated in the Final EA.

Permit 14868 authorizes FWS, under the auspices of the San Joaquin River Restoration Project (SJRRP), to collect, transport, rear, and tag 560 Feather River Fish Hatchery (FRFH) Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) eggs or juveniles during the first three years of the permit annually—and 2,760 eggs or juveniles in the fourth and fifth years, and establish broodstock in the Interim and Salmon Conservation and Research Facility (SCARF) facilities. In addition, the permit authorizes a low level of intentional mortality of 60 FRFH surplus juvenile spring-run Chinook salmon annually for pathogen analysis prior to transport to ensure that pathogens will not be transferred to either the Interim Facility or the SCARF.

Dated: November 8, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27663 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC139

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Bird Mitigation Research in the Farallon National Wildlife Refuge

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Fish and Wildlife Service, allowing the take of small numbers of marine mammals, by Level B harassment only, incidental to a bird mitigation research trial.

DATES: Effective November 7, 2012, through November 6, 2013.

ADDRESSES: A copy of the IHA, application, and Environmental Assessment are available by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the

mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On April 17, 2012, NMFS received an application from the USFWS requesting an IHA for the take, by Level B harassment, of small numbers of five marine mammal species incidental to a bird mitigation research trial in the Farallon National Wildlife Refuge. In accordance with the MMPA and implementing regulations, NMFS issued a notice in the **Federal Register** on August 27, 2012 (77 FR 51773), requesting comments from the public on the proposed issuance of an IHA.

Description of the Specified Activity

A complete description of the specified activity may be found in NMFS' **Federal Register** notice (77 FR 51773, August 27, 2012) and a summary is provided here. The USFWS will conduct a research trial to assess potential bird hazing methods that could be used to minimize the risk of rodent bait ingestion by non-target species, if such an alternative action is chosen, during a proposed house mouse eradication. Removal of the invasive house mice would protect seabirds, assist in the recovery of native plants and endemic species, and prevent the spread of disease to marine mammals.

Potential gull hazing methods—which include pyrotechnics, air cannons, helicopters, and trained dogs—may incidentally result in the harassment of pinnipeds that haul out on the island. Up to five biologists would be present on the islands to implement the research trial and monitor any pinniped disturbance. Part of the USFWS' goal during this trial is to determine which hazing methods are most effective at (1) deterring birds from roosting on the island and (2) minimizing the impacts to pinnipeds. Therefore, researchers would carefully monitor pinnipeds haul-outs during hazing and adjust the research trial to reduce disturbance. Further details regarding the different gull hazing techniques are provided in HSWAC's IHA application (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) and NMFS' **Federal Register** notice (77 FR 51773, August 27, 2012).

Dates and Duration of Activity

The USFWS plans to conduct their research over a 2–4 week period between November 1, 2012 and January 31, 2013. During this time, gull roosts will be visited at least twice a day by researchers for hazing or monitoring. Most visits will last about 15 minutes, although human presence may last for 2–5 hours per day if necessary. Most hazing will take place a few hours before and after sunrise and sunset. Sporadic gull hazing may also occur as needed throughout the day and night.

Region of Activity

The research trial will take place in the Farallon National Wildlife Refuge, a group of islands about 30 miles offshore of San Francisco, California. The refuge was established in 1909 specifically to protect sea birds and pinnipeds and it currently sustains the largest sea bird breeding colony south of Alaska, including 30 percent of California's nesting sea birds. Five pinniped species also breed or haul out on the Farallon Islands. The research trial will be conducted in the South Farallon Islands, which are composed of Southeast Farallon Island, West End Island, Aulon Islets, and Saddle Rock. Most of the gull hazing is expected to occur within Southeast Farallon Island; however, hazing may be implemented around other areas of the island if gulls attempt to roost. The majority of the island's perimeter is considered a potential haul-out for pinnipeds. Species-specific haul-out and pupping sites were provided in NMFS' **Federal Register** notice (77 FR 51773, August 27, 2012).

Sound Propagation

For background, sound is a mechanical disturbance consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's loudness and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. For example, 10 dB yields a sound level 10 times more intense than 1 dB, while a 20 dB level equates to 100 times more intense, and a 30 dB level is 1,000 times more intense. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 µPa'' and ''re: 1 µPa,'' respectively. Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

The use of biosonics, pyrotechnics, and zon guns may result in elevated sound levels that exceed NMFS' threshold for in-air harassment. Current NMFS practice regarding in-air exposure of pinnipeds to sound generated from human activity is that the onset of Level B harassment for harbor seals and all other pinnipeds is 90 dB and 100 dB re: 20µPa, respectively. The USFWS intends to use bird hazing methods that cause the least amount of marine mammal harassment, while still preventing birds from settling on the island. Biosonics, pyrotechnics, and zon guns will be initially used at distances to avoid the onset of Level B harassment. Only if bird hazing methods are still unsuccessful from distant locations will these techniques be used closer to pinniped haul-outs.

Comments and Responses

A notice of proposed IHA and request for public comment was published on

August 27, 2012 (77 FR 51773). During the 30-day public comment period, the Marine Mammal Commission (Commission) provided the only substantive comments. The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

Description of Marine Mammals in the Area of the Specified Activity

The following marine mammal species may be present in the project area during the research trial: Northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina richardii*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), and Northern fur seals (*Callorhinus ursinus*). Information on species status, distribution, and seasonality was provided in NMFS' **Federal Register** notice (77 FR 51773, August 27, 2012).

Potential Effects of the Specified Activity on Marine Mammals

Variable numbers of northern elephant seals, harbor seals, Steller sea lions, California sea lions, and northern fur seals typically haul out around the perimeter of South Farallon Island. Pinnipeds likely to be affected by the bird mitigation trial are those that are hauled out on land at or near the location of gull hazing. Incidental harassment may result if hauled out animals are disturbed by elevated sound levels or the presence of lasers, spotlights, humans, helicopters, or dogs. Although pinnipeds would not be deliberately approached by researchers, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of roosting birds. Disturbance may result in behavioral reactions ranging from an animal simply becoming alert (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not necessarily consider the lesser reactions to constitute Level B behavioral harassment, but does assume that pinnipeds that move greater than one meter or change the speed or direction of their movement in response to the gull hazing methods are behaviorally harassed.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. Due to the limited duration of the research trial (maximum 4 weeks of periodic daily hazing methods), disturbance of pinnipeds will only last for short periods of time and will not occur continuously over the 4-week period. Pinnipeds are unlikely to incur significant impacts to their survival because potential harassment will be sporadic and of low intensity. Although there is a risk of injury or mortality if pinniped pups are crushed during a stampede, the USFWS expects most pups to have left the island before November.

In summary, NMFS believes it highly unlikely that the USFWS' activities will result in the injury, serious injury, or mortality of pinnipeds. Any harassment resulting from the bird mitigation research trial is expected to be in the form of Level B behavioral harassment.

Anticipated Effects on Habitat

The USFWS' activity is not expected to result in the physical alteration of marine mammal habitat. Any impacts resulting from the activity (e.g., short periods of ensonification) will be temporary and no major breeding habitat will be affected. There are no expected impacts to pinniped prey species. Critical habitat has been defined for Steller sea lions as a 20 nautical mile buffer around all major haul-outs and rookeries, as well as associated terrestrial, air, and aquatic zones, which includes Southeast Farallon Island. Overall, the activity is not expected to cause significant impacts on habitats used by the marine mammal species in the project area or on the food sources that they utilize.

Mitigation Measures

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. There are no relevant subsistence uses of marine mammals implicated by this action. The following measures are required in the USFWS' authorization:

Temporal Restriction

The USFWS will conduct the bird mitigation research trial at a time when there are fewer birds on the island and outside of pinniped pupping season. The research schedule will greatly reduce the possibility of injury, serious injury, or mortality to pinnipeds resulting from pups being crushed during a stampede. Pregnant northern elephant seals begin to arrive on the island in late December and early January. Remaining pups from the previous breeding season typically leave the island by November. While hazing operations are not expected to overlap with the presence of northern elephant seal pups, the USFWS will actively avoid pregnant females and pups during the research trial by having a biologist identify and map where these individuals are located.

Limited Use of Pyrotechnics

The USFWS will place pyrotechnics in locations so as to avoid exceeding the hearing threshold of pinnipeds. Researchers will first use pyrotechnics as far away as possible from haul-out sites and gradually get closer if necessary, while monitoring behavioral reactions of pinnipeds. Researchers will not use pyrotechnics directly over a major haul-out site.

Limited Use of Air Cannons

The USFWS will place air cannons in locations so as to avoid exceeding the hearing threshold of pinnipeds. Researchers will use the lowest detonation volume if haul-outs are close, but may experiment with increasing the volume at farther distances. Behavioral response of pinnipeds will be monitored and the air cannon volume will be adjusted at the first sign of large-scale disturbance.

Slow Sequential Approaches of Helicopters

To avoid or minimize pinniped disturbance, helicopter flights in areas near haul-outs will use a slow sequential approach of decreasing altitude in order to habituate marine mammals to the sound.

Slow and Cautious Approaches to Haul-Outs

Any researchers needed to investigate gull roosting areas, conduct hazing, or monitor pinniped responses, will approach haul-outs slowly and cautiously in order to avoid unnecessary disturbance to pinnipeds.

Limited Use and Retrieval of Kites and Radio-Controlled Aircraft

Kites and radio-controlled aircraft will be used sparingly around harbor seals, as they may be more easily spooked than other pinniped species. If a kite or radio-controlled aircraft falls into a haul-out area, then it will either be: (1) Left in place if it could not be retrieved safely or without causing major pinniped disturbance; or (2) retrieved using a slow methodical approach to avoid major pinniped disturbance. Retrieval may also occur at a later time when pinnipeds are either absent or in fewer numbers.

Restricted Use of Trained Dogs

Dogs will be trained to not harass pinnipeds and will have the necessary immunizations and certificates to ensure that no diseases are transmittable. Dogs will be kept at least 30 meters away from pinnipeds to avoid unnecessary harassment.

Visual Observers

The USFWS will designate at least one NMFS-approved protected species observer to monitor pinnipeds and record information before, during, and after hazing operations. The observer will be located at the peak of the island's center, which provides visibility of about 70 percent of the island. If hazing operations take place in areas not visible from the island's peak, additional observers will be used to monitor and record information from other locations. Observers will also monitor offshore areas for predators (e.g., white sharks) to avoid harassing pinnipeds when predators are in nearshore waters. Observers will be equipped to stop hazing operations if they result in unexpected pinniped reactions (e.g., stampeding).

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the above mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The USFWS will designate at least one NMFS-approved protected species observer to monitor pinnipeds and collect information before, during, and after hazing operations. This observer will be located at the peak of the island's center, which provides visibility of about 70 percent of the island. If hazing operations take place in areas not visible from the island's peak, additional observers will be used to monitor and record information from other locations. Before hazing operations begin, observers will record the number and species of animals in the area. During hazing operations, observers will record the species that react to hazing operations, any change in behavior that occurs, the number of animals that flush (or leave their haul-out), and the number of flushing events. More specifically, observers will record pinniped reactions using a 3-point scale where 1 = a reaction not considered harassment (e.g., head raise); 2 = animal moves greater than 1 meter or changes direction, but no flushing occurs; and 3 = flushing occurs. This scale has been used for previous IHAs to record pinniped reactions and the monitoring results will be used by NMFS to assess the intensity of harassment. After the hazing operations, observers will record the number and species of animals remaining in the area. Observers will be in communication with the hazing trial implementation staff in order to relay information on pinniped behavioral responses. Observers will be able to halt hazing activities if they result in unexpected pinniped reactions (e.g., stampeding).

While not a required monitoring measure, if funding and personnel are available, the USFWS will also monitor sound levels of biosonics, pyrotechnics, and zon guns to evaluate the potential exposure levels of pinnipeds to these techniques. If practicable, the USFWS will measure received sound levels at varying distances from the source to determine the distance at which NMFS' in-air thresholds are reached. Results from these measurements will potentially allow the USFWS to determine how far away they need to conduct certain hazing methods.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality, the USFWS will immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with the USFWS to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USFWS will not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the USFWS will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*). The report will include the same information identified in the paragraph above. Activities could continue while NMFS reviews the circumstances of the incident. NMFS will work with the USFWS to determine whether modifications in the activities are appropriate.

In the event that the USFWS discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is

not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USFWS will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Michael.Payne@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Southwest Regional Stranding Coordinator at 562–980–3230 (*Sarah.Wilkin@noaa.gov*), within 24 hours of the discovery. The USFWS will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Current NMFS practice regarding in-air exposure of pinnipeds to sound generated from human activity is that the onset of Level B harassment for harbor seals and all other pinnipeds is 90 dB and 100 dB re: 20μPa, respectively. These threshold levels are based on monitoring of marine mammal reactions to rocket launches at Vandenberg Air Force Base. In those studies, not all harbor seals left a haul-out during a launch unless the sound exposure level was 100 dB or above and only short-term effects were detected.

The USFWS estimated take by using the maximum pinniped counts from weekly censuses in November 2006–2011. These numbers represent the highest count ever recorded for each species during the month of November since 2006. November typically has the highest pinniped counts compared to December and January (the period when the activity would take place). These numbers provide the best available information on haul-outs in the action area. The USFWS' proposed take estimates were simply the maximum weekly counts (Northern elephant seal = 328; harbor seal = 81; Steller sea lion = 224; California sea lion = 3,538; Northern fur seal = 109. However, in order to estimate the maximum number of takes over the length of the trial, NMFS multiplied these numbers by four to account for the maximum 4-week trial period. NMFS' take estimates are shown in Table 1.

TABLE 1—AUTHORIZED TAKE OF PINNIPEDS FOR THE ACTIVITY

Species	Total
Northern elephant seal	1,312
Harbor seal	324
Steller sea lion	224
California sea lion	14,152
Northern fur seal	436

NMFS believes these take estimates are conservative because the USFWS used maximum counts of hauled out pinnipeds during the months of the activity and these numbers do not take mitigation measures into consideration. Furthermore, NMFS expects many of the same animals to haul out throughout the month; so these take estimates likely overestimate the number of individuals to be harassed during the trial. Researchers will make every effort to minimize the take of pinnipeds (e.g., by using hazing methods at the farthest possible distance from haul-outs); moreover, many pinnipeds do not haul out near typical gull roosts. Frequency of harassment will depend upon the location of gulls and the success of hazing operations. Pinnipeds may be disturbed as much as twice per day for the duration of the 2–4 week trial. Table 1 shows the maximum number of animals that may be harassed during the activity; however, the USFWS' required mitigation measures will likely result in fewer takes.

Negligible Impact and Small Numbers Analysis and Determinations

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a number of factors which include, but are not limited to, number of anticipated injuries or mortalities (none of which would be authorized here), number, nature, intensity, and duration of Level B harassment, and the context in which takes occur.

As described above, marine mammals will not be exposed to activities or sound levels which will result in injury (PTS), serious injury, or mortality. Rather, NMFS expects that some marine mammals may be exposed to elevated sound levels or visual stimuli that will result in Level B behavioral harassment. Marine mammals may avoid the area or temporarily change their behavior (e.g., move towards the water) in response to research presence or elevated sound levels. No impacts to marine mammal reproduction are expected because the activity will not take place during pinniped pupping season.

Required mitigation and monitoring measures are expected to lessen the potential impacts to marine mammals (e.g., avoiding pinniped haul-outs). NMFS expects any impacts to pinnipeds to be temporary, Level B behavioral harassment. Marine mammal injury or mortality is unlikely because of the expected sound levels, avoidance of pinniped haul outs, and avoidance of pupping season. The amount of take NMFS authorizes is considered small relative to the estimated stock sizes. Less than two percent of the stock will be harassed for Northern elephant seals, harbor seals, and Steller sea lions; and less than five percent of the stock will be harassed for California sea lions and Northern fur seals. There is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on the analysis contained in this notice, the proposed IHA notice (77 FR 51773, August 27, 2012), and the IHA application, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS has determined that the USFWS' research trial may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The only marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the study area is the eastern DPS of Steller sea lion. On April 18, 2012 (77 FR 23209), NMFS published a proposed rule to delist the eastern DPS. A public comment period was open through June 18, 2012. No final determination has been made. Under section 7 of the ESA, the USFWS consulted NMFS on the bird mitigation research trial. NMFS also consulted internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. A Biological

Opinion was issued in November 2012 and concluded that the USFWS' project is not likely to jeopardize the continued existence of any listed species or adversely modify or destroy critical habitat. The mitigation measures included in the final IHA have also been included in the Incidental Take Statement provided with the Biological Opinion.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect, and cumulative effects to marine mammals resulting from issuance of a 1-year IHA and the potential issuance of future authorizations for incidental harassment for the ongoing project. NMFS made a finding of no significant impact (FONSI) and the EA and FONSI are available on the NMFS Web site listed in the beginning of this document (see **ADDRESSES**).

Dated: November 7, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27661 Filed 11–13–12; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than December 14, 2012. The new system of records will be effective December 24, 2012, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic: privacy@cfpb.gov*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law No. 111–203, Title X, established the CFPB to administer and enforce federal consumer financial law. The new system of records described in this notice ''CFPB.022—Market and Consumer Research Records'' will maintain records related to the CFPB's monitoring of risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services; and to the CFPB's researching, analyzing, and reporting on consumer financial products or services, consumer awareness and understanding of the costs, risks, and benefits of such products or services, and consumer behavior with respect to such products or services. The CFPB will maintain control over the records covered by this notice.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.022—Market and Consumer Research Records'' is published in its entirety below.

Dated: November 5, 2012.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.022

SYSTEM NAME:

Market and Consumer Research Records.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in the system will contain records that have been collected from: providers of consumer financial products and services, consumer reporting agencies, and debt counselors; service providers to the above; consumers; government entities; and commercial and non-profit entities that compile or otherwise possess data sets obtained from one or more of the above sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may include without limitation: (1) contact information for the categories of individuals mentioned above (e.g., names, phone numbers, email addresses, physical addresses, and governmental-issued identification numbers); (2) information collected from consumers as part of surveys, randomized controlled trials, or through other mechanisms; (3) consumer financial transaction data and other information related to consumers' financial statuses; (4) information about the legal relationships between consumers and market participants, such as contracts and dispute records; (5) information about commercial relationships between consumers and other market participants; and (6) information on consumer characteristics collected by market participants or other entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Sections 1013 and 1022 codified at 12 U.S.C. 5493 and 5512.

PURPOSE(S):

Records in this system are collected to enable the CFPB to monitor, research, analyze, and report information relevant to the functioning of markets for consumer financial products and services. This system will also enable CFPB to research, analyze, and report on

[1] Although the CFPB, under 12 U.S.C. 5497(a)(4)(E), is not legally required to follow OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

consumer financial products or services, consumer awareness and understanding of the costs, risks, and benefits of such products or services, and consumer behavior with respect to such products or services.

In most cases, records will not contain personal identifiers. Records with personal identifiers will be used solely for purposes of matching the records with other datasets, which will better enable the CFPB to perform the statutory functions identified above. After the matching is complete, a de-identified copy of the matched dataset will be used for conducting research and analysis. The CFPB will use the personal identifiers after the matching only for the purpose of performing similar matches on future data acquisitions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) the CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) The CFPB; (b) Any employee of the CFPB in his or her official capacity; (c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or (d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(8) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license; and

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies that partner with the CFPB for research purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

The records may contain personal identifiers for purposes of matching the records with other datasets. After the matching is complete, a de-identified copy of the matched dataset will be used for conducting research and analysis. The CFPB may retain the personal identifiers after the matching, but only for the purpose of performing similar matches on future data acquisitions.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access. During matching, identifiable data is solely under the control of a limited number of employees or contractors who are required to uphold confidentiality restrictions of the CFPB. In addition, any contract personnel who have access to the records are required to sign nondisclosure agreements prior to working with the data.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records indefinitely until the National Archives and Records Administration (''NARA'') approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Associate Director, Research Markets and Regulations, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system will be obtained from: providers of consumer financial products and services, consumer reporting agencies, and debt counselors; service providers to the above; consumers; government entities; and commercial and non-profit entities that compile or otherwise possess data sets obtained from one or more of the above sources. In addition, information may be added by CFPB employees and contractors involved in research tasks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–27582 Filed 11–13–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 33; OMB Control No. 9000–0080]

Federal Acquisition Regulation; Submission for OMB Review; Integrity of Unit Prices

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Integrity of Unit Prices. A notice was published in the **Federal Register** at 77 FR 52739, on August 30, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 14, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0080, Integrity of Unit Prices by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0080, Integrity of Unit Prices''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0080, Integrity of Unit Prices'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0080, Integrity of Unit Prices.

Instructions: Please submit comments only and cite Information Collection 9000–0080, Integrity of Unit Prices, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–0650 or email *edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at FAR 52.215–14, Integrity of Unit Prices, requires offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by 41 U.S.C. 3503 (a)(1)(A)(for the civilian agencies) and 10.U.S.C 2306a(b)(1)(A)(i)(for DOD and NASA). The rule contains no reporting requirements on contracts below the simplified acquisition threshold, construction and architect-engineering services, utility services, service contracts where supplies are not required, commercial items, and contracts for petroleum products.

B. Annual Reporting Burden

Respondents: 950.
Responses Per Respondent: 10.
Annual Responses: 9500.
Hours Per Response: 1 hour.
Total Burden Hours: 9,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC, 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: November 7, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–27635 Filed 11–13–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0051]

Agency Information Collection Activities; Comment Request; Application for Client Assistance Program

AGENCY: Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS), ED.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 14, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0051 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Client Assistance Program.

OMB Control Number: 1820–0520.

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: This form is used by states to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended (Rehabilitation Act), to assist consumers and applicants in their relationships with projects, programs and services provided under the Rehabilitation Act including the Vocational Rehabilitation program.

Dated: November 8, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–27701 Filed 11–13–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for Eligibility Designation; Programs Under Parts A and F of Title III of the Higher Education Act of 1965, as Amended (HEA), and Programs Under Title V of the HEA

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information: Programs authorized under Part A, Title III of the HEA: Strengthening Institutions Program (Part A SIP), Predominantly Black Institutions (Part A PBI), Native American-Serving Nontribal Institutions (Part A NASNTI), and Asian American and Native American Pacific Islander-Serving Institutions (Part A AANAPISI).

Programs authorized under Part F, Title III of the HEA: Hispanic-Serving Institutions STEM and Articulation (Part F, Title III HSI STEM and Articulation), Predominantly Black Institutions (Part F PBI), and Asian American and Native American Pacific Islander-Serving Institutions (Part F AANAPISI).

Programs authorized under both Parts A and F in Title III of the HEA: American Indian Tribally Controlled Colleges and Universities (TCCU) (note that in Part F, the program is referred to as ''Tribal Colleges or Universities''); Alaska Native and Native Hawaiian-Serving Institutions (ANNH).

Programs authorized under Title V of the HEA: Developing Hispanic-Serving Institutions (Title V HSI) and Promoting Postbaccalaureate Opportunities for Hispanic Americans (PPOHA).

Notice inviting applications for designation as an eligible institution for Fiscal Year (FY) 2013.

DATES:

Application Available: November 14, 2012.

Deadline for Transmittal of Applications: January 30, 2013, for an institution that wishes to be designated as eligible to apply for a FY 2013 new grant under the Title III or Title V programs. March 4, 2013, for an institution that wishes to apply only for cost-sharing waivers under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS), or the Undergraduate International Studies and Foreign Language (UISFL) programs.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: The Part A SIP, TCCU, ANNH, Part A PBI, Part A NASNTI, and Part A AANAPISI programs are authorized under Title III, Part A, of the HEA. Part F, Title III HSI STEM and Articulation, Part F PBI, and Part F AANAPISI programs are authorized under Title III, Part F of the HEA. The Title V HSI and PPOHA programs are authorized under Title V of the HEA. Please note that certain programs in this notice have the same or a similar name as another program that falls under a different statutory authority. For this reason, we specify the statutory authority as part of the acronym for certain programs.

Under the programs for which we are inviting applications for an eligibility designation, institutions of higher education (''IHEs'' or ''institutions'') are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. An IHE that is designated as an eligible institution may receive a waiver of certain non-Federal cost-share requirements under the FSEOG program in Part A, Title IV of the HEA; the FWS program in section 443 of Part C, Title IV of the HEA; the SSS program in section 402D of Part A, Title IV of the HEA; and the UISFL program in section 604 of Part A, Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III or Title V Programs.

Special Note: To qualify as an eligible institution under the Parts A and F of Title III, HEA programs and Title V, HEA programs listed in this notice, your institution must satisfy several criteria. For most of these programs, this includes criteria that relate to needy student enrollment and to average educational and general (E&G) expenditures for a specified base year. The most recent data available for E&G expenditures are for base year 2010–2011. In order to award FY 2013 grants in a timely manner, we will use these data to evaluate eligibility. Therefore, in completing your eligibility application, please use E&G expenditure data from the base year 2010–2011.

If you are designated as an eligible institution and you do not receive a new award under the Title III or Title V Programs in FY 2013, your eligibility for the non-Federal cost-share waiver under the FSEOG, FWS, SSS, and UISFL programs is valid for five consecutive years. You will not need to reapply for eligibility until 2018, unless you wish to apply for a new Title III or Title V grant. All institutions interested in applying for a new FY 2013 Title III or Title V grant or requesting a waiver of the non-Federal cost share, must apply for eligibility designation in FY 2013. Under the HEA, any IHE interested in applying for a grant under any of these programs must first be designated as an

eligible institution. (34 CFR 606.5 and 607.5).

Eligible Applicants: The eligibility requirements for the Part A of Title III, HEA programs are in the statute and 34 CFR 607.2 through 607.5. The regulations may be accessed at the following Web site: *www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html.*

The eligibility requirements for the Part F of Title III, HEA programs are in the statute. We are in the process of developing regulations for these programs; there are currently no specific program regulations.

The eligibility requirements for the Title V HSI Program are in Part A of Title V of the HEA and 34 CFR 606.2 through 34 CFR 606.5. The regulations may be accessed at the following Web site: *www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

The requirements for the PPOHA Program are in Part B of Title V of the HEA and the notice of final requirements published in the **Federal Register** on July 27, 2010 (75 FR 44055) (PPOHA notice). Among the requirements established for the PPOHA Program in the PPOHA notice are the use of the regulations in 34 CFR 606.2(a) and (b), and 606.3 through 606.5.

Enrollment of Needy Students: For Part A SIP; TCCU; ANNH; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F AANAPISI; Title V HSI; and PPOHA programs, an institution is considered to have an enrollment of needy students if: (1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, or the Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2010–2011 must be more than the median for its category of comparable institutions provided in the 2010–2011 Median Pell Grant and Average E&G Expenditures per full-time equivalent (FTE) Student Table in this notice.

For the Part A PBI Program, see section 318(b)(2) of the HEA and for the Part F PBI program see section 371(c)(9) for the definition of ''Enrollment of Needy Students.''

Educational and General Expenditures per FTE Student: Under the Part A SIP; TCCU; ANNH; Part A PBI; Part A NASNTI; Part A AANAPISI; Title III, Part F HSI STEM and Articulation; Part F PBI; Part F AANAPISI; Title V HSI; and PPOHA programs, an institution should compare its base year 2010–2011 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the base year 2010–2011 Median Pell Grant and Average E&G Expenditures per FTE Student Table in this notice. The institution meets this eligibility requirement under these programs if its average E&G expenditures for the 2010–2011 base year are less than the average for its category of comparable institutions.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support including library expenditures, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers that the institution is required to pay by law.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2010–2011 and the relevant average E&G expenditures per FTE student for the base year 2010–2011 for the four categories of comparable institutions:

Type of institution	Base Year 2010–2011 median Pell Grant percentage	Base year 2010–2011 average E&G expenditures per FTE student
Two-year Public Institutions	36.1	$11,111
Two-year Non-profit Private Institutions	44.4	24,891
Four-year Public Institutions	34.0	29,420
Four-year Non-profit Private Institutions	34.5	46,843

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in sections 392 and 522 of the HEA, 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d).

IHEs requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The regulations at 34 CFR 606.3(c) and 607.3(c) define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Census Bureau.

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2010 ANNUAL LOW-INCOME LEVELS

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$16,755	$20,955	$19,290
2	22,695	28,380	26,115

2010 ANNUAL LOW-INCOME LEVELS—Continued

Size of family unit	Family income for the 48 contiguous states, DC, and outlying jurisdictions	Family income for Alaska	Family income for Hawaii
3	28,635	35,805	32,940
4	34,575	43,230	39,765
5	40,515	50,655	46,590
6	46,455	58,080	53,415
7	52,395	65,505	60,240
8	58,335	72,930	67,065

Note: The 2010 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the fall 2010 semester. For family units with more than eight members, add the following amount for each additional family member: 5,940 for the contiguous 48 States, the District of Columbia, and outlying jurisdictions; 7,425 for Alaska; and 6,825 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Census Bureau for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register** on January 26, 2012 (77 FR 4034).

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained at *www.ntis.gov/products/sma06.aspx*.

Electronic Submission of Applications: Applications for designation of eligibility must be submitted electronically using the following Web site: *http://opeweb.ed.gov/title3and5/*.

To enter the Web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID

Number). Your business office or student financial aid office should have the OPE ID Number. If not, contact the Department using the email addresses of the contact persons listed in this notice under *For Applications and Further Information Contact.* You will find detailed instructions for completing the application form electronically under the ''Eligibility'' link at either of the following Web sites:

www.ed.gov/programs/iduestitle3a/index.html; or *www.ed.gov/hsi*.

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of these requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://opeweb.ed.gov/title3and5/*.

Exception to the Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Nancy Regan, U.S. Department of Education, 1990 K Street NW., room 6032, Washington, DC 20006–8513. Fax: (202) 219–7018.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail: If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

Dr. Nancy Regan, U.S. Department of Education, 1990 K Street NW., Room 6032, Washington, DC 20006–8513.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery: If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address:

Dr. Nancy Regan, U.S. Department of Education, 1990 K Street NW., Room 6032, Washington, DC 20006–8513.

Hand delivered applications will be accepted daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Education

Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for the Title III Programs in 34 CFR part 607, and for the HSI Program in 34 CFR part 606. (d) The notice of final requirements for the PPOHA Program, published in the **Federal Register** on July 27, 2010 (75 FR 44055).

Note: There are no program-specific regulations for the Part A AANAPISI, Part A NASNTI, and Part A PBI programs or any of the Part F, Title III programs. Also, there have been amendments to the HEA since we last issued regulations for the programs established under Titles III and V of the statute.

Accordingly, we encourage each potential applicant to read the applicable sections of the HEA in order to fully understand the eligibility requirements for the program for which they are applying. Please note we are in the process of amending the Title III and Title V regulations. These updated regulations will include regulations for Part A AANAPISI, Part A NASNTI, and Part A PBI programs, as well as the Part F, Title III programs.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

For Applications and Further Information Contact: Carnisia Proctor, Robyn Wood, or Jeffrey Hartman, Institutional Service, U.S. Department of Education, 1990 K Street NW., room 6134, Request for Eligibility Designation, Washington, DC 20006–8513.

You can contact these individuals at the following email addresses or phone numbers:

Carnisia.Proctor@ed.gov, 202–502–7606.

Robyn.Wood@ed.gov, 202–502–7434.

Jeffrey.Hartman@ed.gov, 202–502–7607.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audio tape, or compact disc) on request to one of the contact persons listed in this section.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 7, 2012.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–27673 Filed 11–13–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, December 3, 2012; 9:00 a.m.–5:00 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Kristen G. Ellis, Designated Federal Officer, EMAB (EM–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Phone (202) 586–5810; fax (202) 586–0293 or email: *kristen.ellis@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

Tentative Agenda Topics:

- EM Update
- Updates on EMAB Fiscal Year 2012 Work Plan Assignments
- Tank Waste Strategy Update
- Acquisition and Project Management Subcommittee Interim Report
- Risk Subcommittee Interim Report

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen G. Ellis at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Kristen G. Ellis at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen G. Ellis at the address or phone number listed above. Minutes will also be available at the following Web site *http://www.em.doe.gov/stakepages/emabmeetings.aspx.*

Issued at Washington, DC, on November 7, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–27680 Filed 11–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

DATES: November 30, 2012, 9:00 a.m. to 12:30 p.m.

ADDRESSES: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC (in the Lecture Room).

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Amber Hartman Scholz, PCAST Acting Executive Director, at *ascholz@ostp.eop.gov,* (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the Nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and, Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on November 30, 2012 from 9:00 a.m. to 12:30 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on on-line courses, and K–12 and post-secondary science, technology, engineering, and mathematics (STEM) education. PCAST will also receive an update on its study of the Networking and Information Technology Research and Development (NITRD) program. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on November 30, 2012, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on November 30, 2012 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. (EST) on November 23, 2012. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. (EST) on November 23, 2012 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Amber Hartman Scholz at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on November 5, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer .

[FR Doc. 2012–27684 Filed 11–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 6, 2012; 8:30 a.m.–4:00 p.m.

ADDRESSES: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Bob Rova, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (301) 903–9096; email: *Robert.rova@nuclear.energy.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 18 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and

projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the Office of Nuclear Energy's FY2013 Budget and FY2014 Budget Request, status of the Department of Energy's Low Dose Program and the Million U.S. Worker Study. In addition, there will be presentations by Nuclear Energy Advisory Committee subcommittees. The agenda may change to accommodate committee business. For updates, one is directed the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Thursday, December 6, 2012. Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Bob Rova, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or email: *Robert.rova@nuclear.energy.gov.*

Minutes: The minutes of the meeting will be available by contacting Mr. Rova at the address above or on the Department of Energy, Office of Nuclear Energy Web site at: *http://www.ne.doe.gov/neac/neNeacMeetings.html.*

Issued in Washington, DC, on November 6, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–27683 Filed 11–13–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–7–000.

Applicants: Black Bear SO, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Black Bear SO, LLC.

Filed Date: 11/5/12.

Accession Number: 20121105–5071.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: EG13–8–000.

Applicants: Black Bear Development Holdings, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Black Bear Development Holdings, LLC.

Filed Date: 11/5/12.

Accession Number: 20121105–5073.

Comments Due: 5 p.m. ET 11/26/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2055–002.

Applicants: San Gorgonio Farms, Inc.

Description: San Gorgonio Farms, Inc. submits tariff filing per 35: Updated Market-Based Tariff Revised Limitations and Exemptions Section to be effective 8/15/2012.

Filed Date: 11/5/12.

Accession Number: 20121105–5083.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–313–000.

Applicants: Southern California Edison Company.

Description: Amended SGIA & DSA to Cascade Solar Project, Cascade Solar, LLC to be effective 11/6/2012.

Filed Date: 11/5/12.

Accession Number: 20121105–5041.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–314–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Queue Position #W4–001A_AT9 ? Original SA No. 3407 to be effective 10/4/2012.

Filed Date: 11/5/12.

Accession Number: 20121105–5052.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–315–000.

Applicants: Startrans IO, LLC.

Description: Startrans IO, LLC submits tariff filing per 35.13(a)(2)(iii: 2013 Update to TRBAA in Appendix I to be effective 1/1/2013.

Filed Date: 11/5/12.

Accession Number: 20121105–5060.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–317–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Resource Termination Filing.

Filed Date: 11/5/12.

Accession Number: 20121105–5094.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–318–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Service Agreement No. 668 to be effective 1/1/2013.

Filed Date: 11/5/12.

Accession Number: 20121105–5103.

Comments Due: 5 p.m. ET 11/26/12.

Docket Numbers: ER13–319–000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii: Oxy–SPO–ED DTOA to be effective 11/1/2012.

Filed Date: 11/5/12.

Accession Number: 20121105–5129.

Comments Due: 5 p.m. ET 11/26/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–8–000.

Applicants: Northern Pass Transmission LLC.

Description: Northern Pass Transmission LLC submits Application for Short-Term and Long-Term Debt Authority under ES13–8.

Filed Date: 11/5/12.

Accession Number: 20121105–5092.

Comments Due: 5 p.m. ET 11/26/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27614 Filed 11–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2719–010; ER10–2718–010; ER10–2578–012; ER10–2633–010; ER10–2570–010; ER10–2717–010; ER10–3140–009.

Applicants: East Coast Power Linden Holding, L.L.C., Cogen Technologies

Linden Venture, L.P., Fox Energy Company LLC, Birchwood Power Partners, L.P., Shady Hills Power Company, L.L.C., EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC.

Description: Notice of Non-Material Change in Status of East Coast Power Linden Holding, L.L.C., et al.

Filed Date: 11/6/12.

Accession Number: 20121106–5075.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER12–2694–001.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation.

Description: Northern States Power Company, a Minnesota corporation submits tariff filing per: 20121106 Modified Transmittal Ltr to be effective N/A.

Filed Date: 11/6/12.

Accession Number: 20121106–5055.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER12–2696–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits tariff filing per: 11–6–12_SPS MBR-Supp Filing to be effective N/A.

Filed Date: 11/6/12.

Accession Number: 20121106–5043.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER13–28–001.

Applicants: Chesapeake Renewable Energy LLC.

Description: Chesapeake Renewable Energy LLC submits tariff filing per 35.17(b): Amendment of Pending Filing 1 to be effective 12/1/2012.

Filed Date: 11/6/12.

Accession Number: 20121106–5002.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER13–81–001.

Applicants: Frontier Utilities New York LLC.

Description: Frontier Utilities New York LLC submits tariff filing per 35.17(b): Amendment of Pending Filing 1 to be effective 10/12/2012.

Filed Date: 11/6/12.

Accession Number: 20121106–5034.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER13–320–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Amended IFA with Cabazon Wind Partners, LLC to be effective 1/6/2013.

Filed Date: 11/6/12.

Accession Number: 20121106–5001.

Comments Due: 5 p.m. ET 11/27/12.

Docket Numbers: ER13–321–000.

Applicants: Fairless Energy, LLC.

Description: Fairless Energy, LLC submits tariff filing per 35.1: New Baseline and Amended Single Market-Based Rate Tariff to be effective 11/6/2012.

Filed Date: 11/5/12.

Accession Number: 20121105–5155.

Comments Due: 5 p.m. ET 11/26/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–69–000.

Applicants: Calgren Renewable Fuels, LLC.

Description: Form 556—Notice of Self-certification of Qualifying Cogeneration Facility Status of Calgren Renewable Fuels, LLC.

Filed Date: 11/5/12.

Accession Number: 20121105–5029.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27615 Filed 11–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–327–000]

Porter-Walker LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Porter-Walker LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 27, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27613 Filed 11–13–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 15, 2012. 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATON: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

987TH—MEETING

Regular Meeting

November 15, 2012, 10 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	2013 Winter Assessment.
A–4	AD07–13–005	2012 Report on Enforcement.
	Electric	
E–1	ER12–480–001, ER12–480–002	Midwest Independent Transmission System Operator, Inc.
E–2	EL12–103–000	J.P. Morgan Ventures Energy Corporation.
E–3	RM11–26–000	Promoting Transmission Investment Through Pricing Reform.
E–4	RM10–11–001	Integration of Variable Energy Resources.
E–5	RM12–3–000	Revisions to Electric Quarterly Report Filing Process.
E–6	OMITTED	
E–7	OMITTED	
E–8	ER11–4214–001, ER11–4214–000	PacifiCorp.
E–9	ER12–469–000, ER12–469–001	PJM Interconnection, L.L.C.
E–10	ER05–1056–006	Chehalis Power Generating, L.P.
E–11	OMITTED	
E–12	EL12–89–000	The Incorporated Village of Port Jefferson v. National Grid Generation LLC.
E–13	OMITTED	
E–14	ER12–1753–000	Wyoming Colorado Intertie, LLC.
E–15	EL12–87–000	Los Angeles Department of Water and Power v. PacifiCorp.
	Miscellaneous	
M–1	AD12–12–000	Coordination Between Natural Gas and Electricity Markets.
	Gas	
G–1	RP13–184–000	Wyoming Interstate Company, L.L.C.
G–2	RP13–185–000	Viking Gas Transmission Company.
G–3	RM13–1–000	Enhanced Natural Gas Market Transparency.
G–4	RP10–951–000	*Texas Gas Service Company, a Division of ONEOK, Inc.* v. *El Paso Natural Gas Company.*
	Hydro	
H–1	P–2165–030	Alabama Power Company.
H–2	P–2479–012	Pacific Gas and Electric Company.
	Certificates	
C–1	CP11–546–000	Panhandle Eastern Pipe Line Company, LP.

Issued November 8, 2012.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public

may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2012–27709 Filed 11–9–12; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Project Power Rate

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order Approving an Extension of Power Rate on an Interim Basis.

SUMMARY: The Deputy Secretary of Energy has approved and placed into effect on an interim basis Rate Order No. SWPA–65.

DATES: The effective period for the rate schedule specified in Rate Order No. SWPA–65 is October 1, 2012, through September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. James K. McDonald, Assistant Administrator, Southwestern Power Administration, Department of Energy, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6690, *jim.mcdonald@swpa.gov*.

SUPPLEMENTARY INFORMATION: Rate Order No. SWPA–65, which has been approved and placed into effect on an interim basis, extends the existing power rate for the Sam Rayburn Dam Project (Rayburn), Rate Schedule SRD–08, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc., for a period of one year, through September 30, 2013.

The existing rate schedule for the Sam Rayburn Dam Project was confirmed and approved on a final basis by the Federal Energy Regulatory Commission (FERC) in the FERC Docket No. EF09–4021–000 (126 FERC ¶ 62244), issued March 30, 2009, for the period January 1, 2009, through September 30, 2012. However, the current rate schedule will expire September 30, 2012. The Deputy Secretary of Energy is extending the project rate schedule through September 30, 2013.

Following Department of Energy guidelines, Southwestern Power Administration (Southwestern) prepared a 2012 Current Power Repayment Study using the existing Sam Rayburn Dam Project rate schedule and a Revised Power Repayment Study which indicated the need for an increase in annual revenues of $193,896, or 4.9 percent, to meet repayment criteria. Southwestern's Administrator deferred a rate increase because the Administrator deemed it was in the best interest of the Government to do so as a result of benefits obtained by such a deferral, including reduced federal rate case expense and rate stability. The Deputy Secretary has determined, pursuant to the authority of 10 CFR 903.22(h) and 903.23(a)(3), to adopt a one-year interim extension of the Sam Rayburn Project Power Rate. The extension is required because the current rate expires September 30, 2012. Southwestern will reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2013 Power Repayment Studies.

Pursuant to the authority of Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903), Sections 903.22(h) and 903.23(a)(3), the Deputy Secretary of Energy may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern Power Administration, has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' in connection with the proposed rate extension. On August 21, 2012, Southwestern published notice in the **Federal Register**, (77 FR 50493), of the proposed rate extension for the Rayburn project. Southwestern provided a 30-day comment period as an opportunity for customers and other interested members of the public to review and comment on the proposed rate extension. Southwestern received one comment during the public comment period. The comment, on behalf of Sam Rayburn Dam Electric Cooperative, Inc., expressed no objection to the rate extension through September 30, 2013.

Following review of Southwestern's proposal within the Department of Energy and pursuant to authorities granted in Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903), Sections 903.22(h) and 903.23(a)(3), Rate Order No. SWPA–65, which extends the existing Sam Rayburn Dam Project rate schedule for one year through September 30, 2013, is approved.

Dated: November 7, 2012.

Daniel B. Poneman,

Deputy Secretary.

Deputy Secretary of Energy

Rate Order No. SWPA–65

Order Confirming and Approving an Extension of Power Rate Schedule in Effect

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate extension is issued by the Deputy Secretary pursuant to the Delegation Order No. 00–037.00 and the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR Part 903), Sections 903.22(h) and 903.23(a)(3).

Background

The Sam Rayburn Dam (Rayburn) is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed as an isolated project, under contract with Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC) (Contract No. DE–PM75–92SW00215). SRDEC is comprised of two separate entities, the Sam Rayburn G&T, and the Sam Rayburn Municipal Power Agency.

In the FERC Docket No. EF09–4021–000 (126 FERC ¶ 62244), issued March 30, 2009, for the period January 1, 2009, through September 30, 2012, the FERC confirmed and approved the current annual Rayburn rate of $3,949,872. However, the current rate schedule will expire September 30, 2012. The Deputy Secretary of Energy is extending the project rate schedule through September 30, 2013.

Discussion

Following Department of Energy guidelines, Southwestern prepared a 2012 Current Power Repayment Study using the existing Sam Rayburn Dam Project rate schedule. The study shows the cumulative amortization through FY 2011 at $24,993,504 on a total investment of $30,254,778. The FY 2012 Revised Power Repayment Study indicates the need for an increase in annual revenues of $193,896, or 4.9 percent, to meet repayment criteria.

Southwestern deferred the indicated rate adjustment because it fell within Southwestern's plus-or-minus five percent isolated project rate adjustment threshold and proposed extending the current rate through September 30, 2013. The threshold was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The extension is required because the current rate expires September 30, 2012. Southwestern will reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 2013 Power Repayment Studies.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions,'' has been followed in connection with the rate extension. Opportunities for public review and comment during a 30-day period on the proposed Rayburn power rate extension were announced by a **Federal Register** (77 FR 50493) notice published on August 21, 2012. Written comments were accepted through September 20, 2012. Southwestern provided the **Federal Register** notice to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 30-day public participation process, Southwestern discussed with the customer representatives the proposed rate extension. Only one formal comment was received from Gillis & Angley, LLP, Counsellors at Law, on behalf of Sam Rayburn Dam Electric Cooperative, Inc., which stated that they had no objection to the proposed rate extension.

Upon conclusion of the comment period in September 2012, Southwestern finalized the rate schedule extension for the annual rate of $3,949,872 to be extended for one year through September 30, 2013. This rate extension will allow the FY 2013 Power Repayment Studies to evaluate the ability of the existing rate to provide sufficient revenues to accomplish repayment in the required number of years.

Comments and Responses

Southwestern received one comment during the public comment period. The comment, on behalf of Sam Rayburn Dam Electric Cooperative, Inc., expressed no objection to the rate extension through September 30, 2013.

Order

In view of the foregoing and pursuant to the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, of Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR part 903), Sections 903.22(h) and 903.23(a)(3), I hereby extend on an interim basis, for the period of one year, effective October 1, 2012 through September 30, 2013,the current FERC approved Sam Rayburn Dam Project Rate for the sale of power and energy.

Dated: November 7, 2012.

Daniel B. Poneman,

Deputy Secretary.

[FR Doc. 2012–27674 Filed 11–13–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9751–7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed settlement to address a lawsuit filed by Public Service Company of Oklahoma (''Plaintiff'') in the United States Appeals Court for the Tenth Circuit: *Public Service Company of Oklahoma* v. *U.S. Environmental Protection Agency, et al.,* No. 12–9524. On February 24, 2011, Plaintiff timely filed a Petition for Review, challenging the issuance of EPA's final rule entitled, ''Approval and Promulgation of Implementation Plans; Oklahoma; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determinations,'' 76 FR 81,728 (Dec. 28, 2011) (the ''Final Rule''). The Final Rule partially approved and partially disapproved Oklahoma's state implementation plan (''SIP'') submitted under the ''visibility'' and ''interstate transport'' provisions of the Clean Air Act (''CAA''). The Final Rule included a federal implementation plan (''FIP'') establishing Best Available Retrofit Technology (''BART'') emission limitations on sulfur dioxide (''SO_2'') for Units 3 and 4 of Plaintiff's Northeastern plant (''Plaintiff's Units'') to address the visibility and interstate transport provisions of the CAA. On March 26, 2012, Sierra Club (''Intervenor'') filed a timely motion to intervene. The motion was granted March 27, 2012. The proposed settlement agreement establishes a deadline for EPA to take action on a SIP to be drafted and submitted by Oklahoma addressing Plaintiff's Units.

DATES: Written comments on the proposed settlement agreement must be received by December 14, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0826, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5571; fax number (202) 564–5603; *email address: anderson.lea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement would resolve a lawsuit challenging the issuance of EPA's final rule partially approving and partially disapproving Oklahoma's SIP submitted under the ''visibility'' and ''interstate transport'' provisions of the CAA, 42 U.S.C. § 7410, 7491, and 7492. The Final Rule included a FIP establishing BART emission limitations on SO_2 for Units 3 and 4 of Plaintiff's Northeastern plant to address the visibility and interstate

transport provisions of the CAA. Specifically, the proposed settlement agreement outlines the timeframe in which Oklahoma Department of Environmental Quality (''ODEQ'') develops and the Oklahoma Secretary of Environment submits to EPA for review SIP revisions containing specific elements as spelled out in Attachment A of the settlement agreement to address the ''visibility'' and ''interstate transport'' provisions of the CAA, 42 U.S.C. § 7410, 7491, and 7492. In turn, the proposed settlement agreement establishes a deadline for EPA to take final action on Oklahoma's visibility and interstate transport SIP revisions addressing Plaintiff's units within six months from the date of EPA's determination that the revisions meet the requirements of the CAA consistent with 42 U.S.C. 7410(k)(1)(B). Because this Agreement requires ODEQ to develop and propose SIP revisions and the Oklahoma Secretary of Environment (''Secretary'') to submit these SIP revisions to EPA under the visibility and interstate transport provisions of the CAA, and because ODEQ and the Secretary prefer to regulate Plaintiff under such SIP revisions rather than EPA's FIP, ODEQ and the Secretary are parties to the settlement agreement as are the Plaintiff and the Intervenor. After EPA fulfills its obligations under the proposed settlement agreement, Plaintiff, Intervenor, and EPA will file a joint stipulation of dismissal of Plaintiff's Petition for Review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the proposed settlement agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0826) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2012–27704 Filed 11–13–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) will hold its sixth meeting. The Next Generation Alerting Working Group, DNSSEC Implementation Practices for ISPs Working Group, Secure BGP Deployment Working Group, and E 9–1–1 Best Practices Working Group will be presenting reports for a vote by the

Council. Each of CSRIC's other working groups will present status reports.

DATES: December 5, 2012.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on December 5, 2012, from 9:00 a.m. to 1:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554. The CSRIC is a federal advisory committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2011, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2013. Working Groups are described in more detail at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii.*

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–27646 Filed 11–13–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, November 15, 2012 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of the Minutes for the Meeting of October 18, 2012

Democratic Senatorial Campaign Committee—Request to Modify Conciliation Agreement (MUR 3620)

Request for Reconsideration of Advisory Opinion 2012–25: American Future Fund, American Future Fund Political Action, McIntosh

Draft Advisory Opinion 2012–34: Freedom PAC and Friends of Mike H

Audit Division Recommendation Memorandum on Rightmarch.com PAC, Inc. (A09–25)

Audit Division Recommendation Memorandum on the Maine Republican Party (MRP) (A09–09)

Audit Division Recommendation Memorandum on the McCain-Palin 2008, Inc. and McCain-Palin Compliance Fund, Inc.

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–27703 Filed 11–9–12; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 28, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Selken Family Group, which consists of Teresa L. Selken Revocable Trust #2; Teresa L. Selken, Trustee; William D. Selken; Teresa A. Selken; and Ryan J. Selken, all of Keystone, Iowa; and Ronald J. Selken, Council Bluffs, Iowa; and Renae C. McKay,* Iowa City, Iowa; together as a group acting in concert, to acquire voting shares of Keystone Community Bancorporation, and thereby indirectly acquire voting shares of Keystone Savings Bank, Keystone, Iowa.

Board of Governors of the Federal Reserve System, November 8, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–27620 Filed 11–13–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board

under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 14, 2013.

ADDRESSES: You may submit comments, identified by *FR 1379, FR 2436, FR 3036, FR 4001,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

1. *Report title:* Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form.

Agency form number: FR 1379a, FR 1379b, FR 1379c, and FR 1379d.

OMB control number: 7100–0135.

Frequency: Event generated.

Reporters: Consumers, appraisers, and financial institutions.

Estimated annual reporting hours: FR 1379a: 116 hours; FR 1379b: 167 hours; FR 1379c: 1,351 hours; FR 1379d: 100 hours.

Estimated average hours per response: FR 1379a: 5 minutes; FR 1379b: 5 minutes; FR 1379c: 10 minutes; FR 1379d: 30 minutes.

Number of respondents: FR 1379a: 1,391; FR 1379b: 2,001; FR 1379c: 8,107; FR 1379d: 200.

General description of report: This information collection is voluntary and is authorized by law pursuant to section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a), and sections 3(q) and 8 of the Federal Deposit Insurance Act (FDIC Act), 12 U.S.C. 1813(Q) and 1818. Additionally the Federal Reserve is authorized to collect the information on the FR 1379d pursuant to section 1103 of the Financial Institutions and Reform, Recovery, and Enforcement Act, which authorizes the Federal Financial Institutions Examination Council—Appraisal Subcommittee to ''perform research, as [it] considers appropriate,'' for the purpose of carrying out its duties, 12 U.S.C. 3335. The FR 1379a is not considered confidential. The FR 1379b collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. The FR 1379c collects the respondent's third-party representative if the respondent has such a representative. The proposed FR 1379d would collect the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. Thus, some of the information collected on the FR 1379b, FR 1379c, and FR 1379d may be considered confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(7)).

Abstract: The FR 1379a questionnaire is sent to consumers who have filed complaints with the Federal Reserve against state member banks. The information is used to assess their satisfaction with the Federal Reserve's handling and written response to their complaint at the conclusion of an investigation. The FR 1379b questionnaire is sent as needed to consumers who contact the FRCH to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. Consumers use the FR 1379c to electronically submit a complaint against a financial institution to the FRCH.

Current Actions: The Federal Reserve proposes to revise the FR 1379 by implementing a new voluntary Appraisal Complaint Form (FR 1379d). The FR 1379d would collect information about complaints regarding a regulated institution's non-compliance with the appraisal independence standards and the Uniform Standards of Professional Appraisal Practice,[1] including complaints from appraisers, individuals, financial institutions, and other entities. The information collected is necessary so that the federal agencies [2] may better assist the Federal Financial Institutions Examination Council—Appraisal Subcommittee (FFIEC–ASC) [3] in its efforts to implement Dodd-Frank Wall Street Reform and Consumer Protection Act [4] that requires a national hotline be established for appraisal related complaints.

2. *Report title:* Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannually.

Reporters: U.S. dealers of over-the-counter derivatives.

Estimated annual reporting hours: 2,120 hours.

Estimated average hours per response: 212 hours.

Number of respondents: 5.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), 348(a), 263, and 353–359) and is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: This collection of information complements the triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

Current Actions: The Federal Reserve proposes to revise the FR 2436 by collecting additional data on credit default swaps (CDS) counterparties in Table 4E. Following the broad expansion of CDS data collected on the report and implemented during 2010 and 2011, it was determined that the data on location of CDS counterparties needed further refinement in order to align the data collection with current BIS standards and to improve the interpretive power of the CDS counterparty data.

3. *Report title:* Central Bank Survey of Foreign Exchange and Derivative Market Activity.

Agency form number: FR 3036.

OMB control number: 7100–0285.

Frequency: One-time.

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Estimated annual reporting hours: Turnover Survey, 2,275 hours; Outstandings survey, 210 hours.

Estimated average hours per response: Turnover Survey, 65 hours; Outstandings survey, 70 hours.

Number of respondents: Turnover Survey, 35; Outstandings survey, 3.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 263) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks once every three years. More than 50 central banks plan to conduct the survey in 2013. The BIS compiles aggregate national data from each central bank to produce global market statistics. The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents also use the published data to gauge their market share.

Current actions: The Turnover portion would cover approximately 35 market-making financial institutions. The Derivatives Outstanding portion would cover only three firms because it is collected (on a fully consolidated basis) only from derivatives dealers that are headquartered in the United States and that do not report the FR 2436 and because market-making in OTC derivatives is more concentrated than in foreign exchange. The Federal Reserve Bank of New York plans to invite the three institutions targeted for the Derivatives Outstanding portion of the survey to participate instead on the FR 2436 beginning in June 2013, in which case the Derivatives Outstanding portion of the survey would not be conducted in 2013.

Differences between the proposed survey and the 2010 survey are:

1. A more detailed counterparty breakdown for ''other financial institutions'' for credit default swap reporting would be added to the Outstanding survey to be consistent with the FR 2436. The growth in the credit derivative market has made these data an important component of understanding the structure and activity of the overall over-the-counter derivatives market.

2. The Canadian dollar would be added in tables for foreign exchange and interest rate derivatives on the Outstanding survey to be consistent with the FR 2436 and to align with the BIS global reporting requirements.

3. An additional 18 currency pairs would be added in tables for foreign exchange transactions on the Turnover survey, accompanied by full instrument and counterparty breakdowns. This change would facilitate reporting of currency pairs in carry trade strategies and ensure comprehensive identification of turnover in all participating countries' currencies.

4. A new item ''of which non-deliverable'' would be added under the total of ''outright forwards'' for six emerging market currency pairs opposite the U.S. dollar that have significant non-deliverable forward (NDF) volumes, and for the total amount of NDFs included under ''outright forwards.'' In prior surveys, NDF turnover was captured under ''outright forwards.'' With some previously non-deliverable currencies now being traded in deliverable forms, this new item will help distinguish between their deliverable and non-deliverable forward turnover. These data will provide insight into turnover in currencies for which there is not a deliverable market offshore due to limitations placed on such activity by local market authorities.

5. The counterparty breakdown would be modified to add more granularity to the ''other financial institutions'' category for the foreign exchange section of the Turnover survey. Other financial institutions would be split according to their primary business

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[1] *www.appraisalfoundation.org.*

[2] ''Agencies'' include the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and Consumer Financial Protection Bureau.

[3] Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 amended the FIRIRCA Act of 1978 to create the ASC ''within'' the FFIEC on August 9, 1989. Per Title XI, the ASC's mission is to monitor federal, state, and appraisal industry initiatives relative to the appraisal process at federally regulated financial institutions and maintain a national registry of appraisers eligible to perform appraisals for federally related real estate transactions. As an independent FFIEC subcommittee, the ASC is funded by fees collected through the registry. The ASC board has seven members, one from each of these agencies: OCC, FRB, FDIC, NCUA, CFPB, FHFA and U.S. Department of Housing and Urban Development (HUD). The ASC Web site may be found at *www.asc.gov/Home.aspx.*

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1473, Public Law 111–203, 124 Stat. 1376, July 21, 2010.

activity into non-reporting banks, institutional investors, hedge funds and proprietary trading firms, and official sector financial institutions, Other, and Undistributed.[5] This additional granularity would provide better information on the contribution of the different types of other financial institutions, which have accounted for a large part of the growth in foreign exchange turnover in recent years, to foreign exchange market growth more explicitly.

6. A new item ''of which prime brokered'' would be added to the foreign exchange section of the Turnover survey to capture deals done via prime brokerage relationships for the reported totals for each instrument and currency pair. This would help assess the extent to which prime brokerage adds to foreign exchange turnover and which instruments and currencies are favored by prime brokerage customers. It will also add some insight to the geographic distribution of prime brokerage activity. Only survey respondents that act as foreign exchange prime brokers will need to report this item.

7. A new item ''of which retail driven'' would be added to the reported totals for each instrument and currency pair for the foreign exchange section of the Turnover survey. This new item will capture transactions with wholesale financial counterparties that cater to retail investors as well as direct transactions with non-wholesale investors. This would help assess the extent to which retail customers contribute to the turnover between dealers and could provide insight in to the geographic distribution of retail investors and the instrument and currencies preferred by retail investors.

8. The Execution Method schedule on the Turnover survey would be modified to breakdown execution methods for foreign exchange turnover by instrument (spot, forward, swaps, and option) and counterparty (reporting dealers, other financial institutions, and non-financial institutions). The enhanced breakdown of the execution method categories better reflects current market practices and simultaneously disentangles execution methods from counterparty types. Execution would be reported as:

a. Voice-Direct—not intermediated by a third party

b. Voice-Indirect—intermediated by a third party

c. Electronic-Direct—not intermediated by a third party

i. Single bank proprietary trading system (electronic-direct)

ii. Other (electronic-direct) such as: Reuters Conversational Dealing, Bloomberg, etc.

d. Electronic-Indirect—intermediated by a third party electronic platform, i.e., via a matching system

i. Reuters Matching or Electronic Broking Services (EBS)—major electronic trading platforms that are geared towards the interdealer market

ii. Other electronic communication networks (ECNs)—multi-bank dealing systems such as Currenex, FXall, Hotspot, Bloomberg Tradebook, etc.

iii. Other (electronic-indirect)

e. Undistributed—captures the amount of turnover for each instrument and counterparty that fails to be allocated into one of the aforementioned execution method categories.

9. The Turnover survey would add three quantitative questions on ''retail driven'' transactions asking for estimated percentage shares of transactions with ''wholesale'' counterparties, ''non-wholesale'' on-line transactions, and ''non-wholesale'' voice transactions.[6] This change would allow for the differentiation of turnover in the ''non-financial customer'' category of customer trades driven by retail investors versus those that are wholesale driven. This would yield information useful to assess the extent to which retail investors contribute to turnover between dealers and their customers. It may also provide some insight into the currency pairs and methods of execution favored by retail investors.

10. The Turnover survey would add three quantitative questions on algorithmic and high frequency trading asking for estimated percentage shares of these types in spot turnover reported with hedge funds and proprietary trading firms for all currency pairs, major currency pairs and non-major currency pairs. This change would allow for estimates of the growth in foreign exchange turnover due to high frequency trading, which has expanded rapidly in recent years. As high frequency trading is a general trading style adoptable by any firm with access to the relevant technology, it is not practical to capture this activity under a single counterparty category.

[5] ''Undistributed'' was added to prepare for the possibility that some reporting dealers may be technically incapable of reporting in full the new breakdowns under ''other financial institutions.'' This entry captures the amount of ''other financial institutions'' turnover that fails to be allocated into one of the sub-categories above.

[6] For ease of reporting, the ''non-wholesale'' transactions excludes branch retail spot transactions, transfers of funds denominated in different currencies across any two accounts, and electronic transactions using ATM, credit card, and stored value transactions that are executed in a foreign currency. They would also exclude transactions conducted by retail clients as part of a commercial transaction even if denominated in a foreign currency.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Domestic Branch Notification.

Agency form number: FR 4001.

OMB control number: 7100–0097.

Frequency: On occasion.

Reporters: State member banks (SMBs).

Estimated annual reporting hours: 501 hours.

Estimated average hours per response: 30 minutes for expedited notifications and 1 hour for nonexpedited notifications.

Number of respondents: 207 expedited and 397 nonexpedited.

General description of report: This information collection is mandatory per section 9(3) of the Federal Reserve Act (12 U.S.C. 321). This requirement is implemented by the provisions of section 208.6 of the Board's Regulation H (12 CFR 208.6). The individual respondent information in the notification is not considered confidential.

Abstract: The Federal Reserve Act and Regulation H require an SMB to seek prior approval of the Federal Reserve System before establishing or acquiring a domestic branch. Such requests for approval must be filed as notifications at the appropriate Reserve Bank for the SMB. Due to the limited information that an SMB generally has to provide for branch proposals, there is no formal reporting form for a domestic branch notification. An SMB is required to notify the Federal Reserve by letter of its intent to establish one or more new branches and provide with the letter evidence that public notice of the proposed branch(es) has been published by the SMB in the appropriate newspaper(s). The Federal Reserve uses the information provided to fulfill its statutory obligation to review any public comment on proposed branches before acting on the proposals and otherwise to supervise SMBs.

Board of Governors of the Federal Reserve System, November 8, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–27623 Filed 11–13–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1303 Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies.

OMB No.: 0980–0242.

Description: Section 646 of the Head Start Act requires the Secretary to prescribe a timeline for conducting administrative hearings when adverse actions are taken or proposed against Head Start or Early Head Start grantees or delegate agencies. The Office of Head Start is proposing to renew without changes this rule which implements these requirements and which prescribe when a grantee must submit information and what that information should include to support a contention that adverse action should not be taken.

Respondents: Head Start and Early Head Start grantees and delegate agencies against which the Head Start Bureau has taken or proposes to take adverse actions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Appeal	20	1	26	520

Estimated Total Annual Burden Hours: 520

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.*

Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–27583 Filed 11–13–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0911]

Privacy Act of 1974; Report of a New System of Records; Food and Drug Administration User Fee System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 and the Food and Drug Administration's (FDA) regulations for the protection of privacy, FDA is publishing notice of a Privacy Act system of records entitled, ''FDA User Fee System, HHS/FDA,'' System Number 09–10–0021. FDA utilizes the User Fee System (UFS) to collect fees pursuant to Federal law and FDA's implementing regulations. The records kept in this system relate to fees assessed under the Freedom of Information Act (FOIA), the Prescription Drug User Fee Act, the Medical Device User Fee and Modernization Act, the Animal Drug User Fee Act, the Animal Generic Drug User Fee Act, the Mammography Quality Standards Act, the Family Smoking Prevention and Tobacco Control Act, the Food Safety Modernization Act, the Biosimilar User Fee Act, the Generic Drug User Fee Act, and other fees assessed by FDA under its Federal Food, Drug and Cosmetic Act authority such as color additive certification fees and export certificate fees. For purposes of this notice, these fees are collectively referred to as user fees.

DATES: *Effective Date:* The new system of records will be effective on November 14, 2012, with the exception of the routine uses. The routine uses will become effective on December 31, 2012. Submit either electronic or written comments by December 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0911, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2012–N–0911 for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lisa Berry, Office of Financial Management,

Food and Drug Administration, 1350 Piccard Dr., suite 200A, Rockville, MD 20850, 301–796–7225.

SUPPLEMENTARY INFORMATION:

I. Description of the System of Records

The UFS is a billing and collections system that maintains information about the individuals, organizations, and companies required to pay user fees. Information maintained in the UFS includes:

- Contact person's name, phone number, fax number, and email address;
- Federal Employer Identification Number (FEIN) for entity remitters;
- Taxpayer Identification Number (TIN) for individual remitters, which is encrypted with only the last four characters visible (in some circumstances individual remitters may use a Social Security Number as the TIN);
- Company name or the Organization name; and
- Data Universal Numbering System (DUNS) number and business address.

The UFS also stores application details as the fee remitter (submitter) creates coversheets to pay user fees. These details include, but are not limited to, the type of application, waiver and exemption status, and Small Business Decision (SBD) Number. When a submitter generates a coversheet the UFS will only print the last four characters of the FEIN/TIN along with the organization name and address.

Additionally, the UFS stores billing details, adjustments to invoices, and payment receipt information including date, mode, and amount of payment.

II. Routine Use Disclosures of Information in the System

The Privacy Act allows FDA to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The routine uses in this system meet the compatibility requirement of the Privacy Act.

A number of the routine uses listed in the System of Records Notice below are common to systems across the government. These include routine uses allowing disclosure to Federal Agencies as necessary in order to respond to a confirmed or suspected breach of system security or confidentiality (routine use number 1); to the Department of Justice (DOJ) to obtain DOJ advice on producing user fee records in response to a FOIA request (routine use 2); to DOJ when DOJ represents the Agency in litigation (routine use 7); in response to a subpoena issued by a duly empowered Federal Agency (routine use 3); to a court or tribunal when the records are relevant and necessary to a proceeding involving the Agency or an employee (routine use 8); to contractors and others who perform services for the Agency related to the UFS (routine use 9); to the National Archives and Records Administration (NARA) and General Services Administration as needed in the course of records management inspections (routine use 10); and to the Department of Homeland Security (DHS) in circumstances where system records are captured in an intrusion detection program and made accessible to DHS (routine use 11).

Additional routine uses specific to the UFS allow disclosure to entities as permitted under the Debt Collection Improvement Act (routine use 4); to banks in order to process payment made by credit card (routine use 5); and to Dun and Bradstreet to validate submitter contact information (routine use 6).

SYSTEM NUMBER:

09–10–0021.

SYSTEM NAME:

FDA User Fee System, HHS/FDA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

This system is located at FDA's Data Center in Ashburn, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records about individuals and companies that are required to submit user fee payments to the FDA. This includes organizations registered in the UFS, those billed through the system, as well as those submitting applications for review or otherwise assessed fees under the User Fee Program.

Privacy Act notification, access, and amendment rights relative to the UFS are available only to individuals who are the subject of records in this system. User fee record subjects are individuals required to pay a user fee, including individual FOIA requestors and individuals who are sole proprietors of an entity required to pay a user fee. Although records in the system may contain personally identifiable information (PII) related to other individuals, only the specified fee submitters are considered subjects of records in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. The UFS maintains information about individuals, companies and organizations that pay user fees. This includes: (a) For an entity remitter, a FEIN, and for an individual remitter, a TIN; (b) company or organization name and address; (c) DUNS number; and (d) contact person's name, phone number, Fax number, and email address.

2. The UFS also stores application information collected when the fee remitter (submitter) creates coversheets in order to pay user fees. This information includes the type of application, waiver and exemption status, and SBD number.

3. The UFS stores fee processing information including: Billing details; adjustments to invoices including credit and debit memos; and receipt information including date, mode, and amount of payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 371, 379, 379e, 379h, 379h–1, 379j, 379j–12, 379j–21, 379j–31, 387s, and 393(d)(2); 42 U.S.C. 263b(r)(1); 5 U.S.C. 301, 552; and 44 U.S.C. 3101.

PURPOSE(S):

FDA personnel and any contractors assisting them will use information in the system, on a need-to-know basis, for the following purposes:

1. To assess and collect user fees.

2. To provide an electronic payment and receipt mechanism that is integrated with the U.S. Department of Treasury's *http://www.Pay.gov* Web site and the various FDA Centers.

3. To provide Web-based capabilities including transactional inquiries and information on payment status.

4. To facilitate debt collection activities in accordance with the Debt Collection Improvement Act of 1996 and the HHS regulations for claims collections (45 CFR Part 30).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING THE PURPOSES OF SUCH USES AND CATEGORIES OF USERS:

Permitted disclosures include those made in accordance with routine uses that are listed in the notice of the system of records. 5 U.S.C. 552a(b)(3). The Privacy Act defines ''routine use'' as ''with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.'' See also FDA's Privacy Act regulations, defining ''routine use'' as ''use outside the Department of Health and Human Services that is compatible with the purpose for which the records were collected and described in the [System of Records] notice * * *'' 21 CFR 21.20(b)(5).

Records in this system that contain information about record subjects and nonsubjects (such as FDA employees who operate the system) may be disclosed to recipients outside HHS in accordance with the following routine uses:

1. Records may be disclosed to appropriate Federal Agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records.

2. In the event HHS deems it desirable or necessary, in determining whether particular records are required to be disclosed under the FOIA, disclosure may be made to the DOJ for the purpose of obtaining its advice.

3. Where Federal Agencies having the power to subpoena other Federal Agencies' records, such as the Internal Revenue Service, issue a subpoena to HHS for records in this system of records, HHS will make such records available, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. A record from this system may be disclosed to entities as provided for in the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

5. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his/her credit card number for this purpose.

6. UFS submitter data (name, address, DUNS number) may be provided to Dun and Bradstreet for validation for the purpose of maintaining database integrity.

7. Disclosure may be made to the Department of Justice (DOJ) when: (a) The Agency or any component thereof; (b) any employee of the Agency in his or her official capacity; (c) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the U.S. Government is a party to litigation or has an interest in such litigation, and by careful review, the Agency determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records.

8. Disclosure may be made to a court or other tribunal, when: (a) The Agency or any component thereof; (b) any employee of the Agency in his or her official capacity; (c) any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee; or (d) the U.S. Government is a party to the proceeding or has an interest in such proceeding, and by careful review, the Agency determines that the records are both relevant and necessary to the proceeding and the use of such records is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the Agency collected the records.

9. Disclosure may be made to contractors and other individuals who perform services for the Agency related to this system of records, and who need access to the records in order to perform such services. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. Disclosure may be made to NARA and/or the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

11. Records may become accessible to U.S. Department of Homeland Security (DHS) cyber security personnel, if captured in an intrusion detection system used by HHS/FDA and DHS pursuant to the DHS Einstein 2 program. Under Einstein 2, DHS uses intrusion detection systems to monitor Internet traffic to and from Federal computer networks to prevent malicious computer code from reaching the networks. According to DHS' Privacy Impact Assessment for Einstein 2 (available on the DHS Cybersecurity privacy Web site, *http://www.dhs.gov*), only PII that is directly related to a malicious code security incident is captured by and accessible to DHS, and DHS does not access PII unless the PII is part of the malicious code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained in hard copy files and on computer disks, hard drives, file servers, and other types of data storage devices.

RETRIEVABILITY:

Records may be retrieved by computer search using name, address, contact information, system identifiable numbers (party/organization, submitter numbers), DUNS Number, and payment information (for refunds).

SAFEGUARDS:

1. *Authorized users:* Access is restricted to FDA employees and contractors with a Level 5 or higher clearance who have a need for the records in the performance of their duties.

2. *Procedural and technical safeguards:* Technical controls include identification and authentication, access control, audit and accountability, system and communication protection, timely account disablement/deletion, configuration management, maintenance, system and information integrity, media protection, and incident response. These controls extend to remote users as well. Additionally, when a remitter (submitter) generates a coversheet the UFS will only print the last four characters of the FEIN/TIN along with the Organization name and address.

3. *Physical safeguards:* Physical security safeguards include controlled-access buildings where all records (CDs, computer listings, and paper documents) are maintained in secured areas, locked buildings, locked rooms, and locked cabinets.

RETENTION AND DISPOSAL:

UFS records are maintained in accordance with FDA's Records Control Schedule, and with the applicable General Records Schedule (GRS) and disposition schedule approved by NARA. UFS records fall under GRS 20, Items 2a(4) (hard copy input records), 12 and 16 (Output records and reports), and NARA approved citation N1–088–09–11, Items 1.1 (files maintained in the Office of Financial Management), 1.2 (data maintained by FDA Centers), and 1.3.2 (database records).

SYSTEM MANAGER AND ADDRESS:

George Brindza, Division of Systems, FDA Office of Information Management (OIM), 2094 Gaither Rd., rm. 131, Rockville, MD 20850; 301–796–7845.

NOTIFICATION PROCEDURES:

In accordance with 21 CFR part 21, subpart D, an individual may submit a request to the FDA Privacy Act Coordinator, with a notarized signature, to confirm whether records exist about him or her. Requests should be directed to the FDA Privacy Act Coordinator, Division of Freedom of Information, 12420 Parklawn Dr., ELEM–1036, Rockville, MD 20857. An individual requesting notification via mail should certify in his or her request that he or she is the individual who he or she claims to be and that he or she understands that the knowing and willful request for or acquisition of a

record pertaining to an individual under false pretenses is a criminal offense under the Act subject to a $5,000 fine, and indicate on the envelope and in a prominent manner in the request letter that he or she is making a ''Privacy Act Request.'' Additional details regarding notification request procedures appear in 21 CFR part 21, subpart D.

RECORD ACCESS PROCEDURES:

Procedures are the same as above, in Notification Procedures. Requesters should also reasonably specify the record contents being sought. Some records may be exempt from access under 5 U.S.C. 552a(d)(5), if they are ''compiled in reasonable anticipation of a civil action or proceeding.'' If access to requested records is denied, the requester may appeal the denial to the FDA Commissioner. Additional details regarding record access procedures and identity verification requirements appear in 21 CFR part 21, subpart D.

CONTESTING RECORD PROCEDURES:

In addition to the procedures described above, requesters should reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction, and provide justifying information showing why the record is not accurate, complete, timely, or relevant. Rules and procedures regarding amendment of Privacy Act records appear in 21 CFR part 21, subpart E.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from many sources, including: (1) Directly from the individual, company or organization that is required to submit user fees to FDA; (2) from materials supplied by the submitter or individual acting on his/her behalf; (3) from FDA Centers such as the Center for Drug Evaluation and Research, Center for Devices and Radiological Health, Center for Biologics Evaluation and Research, Center for Veterinary Medicine, Center for Tobacco Products, Center for Food Safety and Applied Nutrition, and the Office of Financial Management; and (4) from any other relevant source.

RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Dated: November 7, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–27580 Filed 11–13–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: NEXT Generation Health Study; Correction Notice

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 23, 2012 (Volume 77, Number 36) and allowed 60-days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment, to correct the omission of the peers survey in the previous notice, and to correct the errant data that appeared in Table 1 and Table 2 of the notice. The data in Table 1 and Table 2 of this notice are correct. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: NEXT Generation Health Study.

Type of Information Collection Request: New.

Need and Use of Information Collection:

The goal of this research is to continue to obtain data on adolescent health and health behaviors annually for seven years beginning in the 2009–2010 school year from a national probability sample of adolescents. The transition from high school to post high school years is a critical period for changes in adolescent health risk behaviors. This information will enable the improvement of health services and programs for youth. The study will provide needed information about the health of U.S. adolescents and influences on their health.

The study has collected information on adolescent health behaviors and social and environmental contexts for these behaviors annually for three years beginning in the 2009–2010 school year. This study will continue to collect this information for an additional four years beginning in 2013. The health behaviors of participants' friends will also be surveyed at two points in time: when participants are 19 years old and again when they are 21. Self-report of health status, health behaviors, and health attitudes will be collected by online surveys.

TABLE 1—ANNUAL BURDEN FOR AFFECTED PUBLIC: YOUNG ADULTS

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Young Adults in NEXT Cohort	2,100	1	1.0	2,100
Peers Recruited by NEXT Plus Young Adults	2,535	1	.67	1,698

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated

response time, should be directed to the: *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Ronald Iannotti, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland 20892–7510, or call non-toll free number 301–435–6951 or Email your request, including your address to *ri25j@nih.gov.*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 5, 2012.

Jamelle E. Banks,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 2012–27577 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Council, October 31, 2012, 8:00 a.m. to October 31, 2012, 4:00 p.m., Health and Human Services Building, 5635 Fishers Lane, Rockville, MD 20852 which was published in the **Federal Register** on September 26, 2012, 77 FR 59202.

The meeting will be held on December 3, 2012, from 8:00 a.m. to 4:00 p.m. The meeting location remains the same. The meeting is open to the public.

Dated: November 6, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27585 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, November 29, 2012, 8:00 a.m. to November 30, 2012, 5:00 p.m., Fishers Lane Conference Center, 5635, Fisher Lane, Terrace Level, Rockville, MD, 20852 which was published in the **Federal Register** on November 7, 2012, 2012–27093.

The meeting location has changed to The Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852. The meeting is closed to the public.

Dated: November 7, 2012.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27584 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pancreatic Tumorigenesis.

Date: December 3, 2012.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: December 5–6, 2012.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: December 11, 2012.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence E. Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 6, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27586 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 3–4, 2012.

Time: December 3, 2012, 8:30 a.m. to 5:00 p.m.

Agenda: NICHD Director's Report; NCMRR Director's Report; Discussion of the recommendations from the NIH Blue Ribbon Panel on Rehabilitation Research; and Promoting rehabilitation through Small Business Innovative Research (SBIR) Initiatives

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Time: December 4, 2012, 8:30 a.m. to 12:00 p.m.

Agenda: Other business of the NABMRR.

Place: Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Ralph M. Nitkin, Ph.D., Director, B.S.C.D., Biological Sciences and Career Development, NCMRR, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6100 Executive Boulevard, Room 2A03, Bethesda, MD 20892–7510, (301) 402–4206, *nitkinr@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 6, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27588 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Services (SERV) Conflict Meeting.

Date: December 3, 2012.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH R34 HIV and AIDS Applications.

Date: December 5, 2012.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rebecca C Steiner, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Tissue Consortium.

Date: December 6, 2012.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; HIV Eradication from CNS Reservoirs.

Date: December 7, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW, Washington, DC 20037.

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Intervention for Pathological Grief Disorder.

Date: December 14, 2012.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27590 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: November 19, 2012.

Time: 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27592 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Interventions to Treat Chronic, Persistent and Latent Infections J1.

Date: December 7, 2012.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3128, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 7, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27594 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: December 13, 2012.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room # 2006, 6610 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MDS–7616, Bethesda, MD 20892, 301–451–2639, *poeky@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 7, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27593 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee

Date: December 4, 2012.

Time: 1:50 p.m. to 5:30 p.m.

Date: December 5, 2012.

Time: 8:30 a.m. to 3:00 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will discuss selected human gene transfer protocols. Please view the meeting agenda at *http://oba.od.nih.gov/rdna_rac/rac_meetings.html* for more information.

Place: National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html*, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

OBA will offer those members of the public viewing the meeting via webcast (see link on OBA Meetings Page) the opportunity to submit comments to be read during the scheduled public comment periods. Individuals wishing to submit comments should use the comment form, which will accommodate comments up to 1500 characters, and will be available on the OBA Meetings Page during the meeting. Please submit your comment prior to the start of the public comment period. Please limit your comment to a statement that can be read in one to two minutes. Please include your name and affiliation with your comment.

OBA will read comments into the record during the public comment periods that are specified on the agenda. Please note, while every effort is made to keep the meeting discussions to the times stated on the agenda, it is not unusual for the meeting to run ahead or behind schedule due to changes in the time needed to review a protocol. It is advisable to monitor the webcast to determine when public comments will be read. Comments submitted electronically will follow any comments by individuals attending the meeting in person. Comments will be read in the order received and your name and affiliation will be read with the comment. Please note OBA may not be able to read every comment received in the time allotted for public comment. Comments not read will become part of the public record.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27591 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Novel NeuroAIDS Therapeutics IPCP (P01).

Date: November 29, 2012.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 6, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27589 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Ancillary Studies.

Date: December 4, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Centers at Minority Serving Institutions—Phase II P50.

Date: December 6, 2012.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 7180, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 6, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–27587 Filed 11–13–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of the Secretarial Commission on Indian Trust Administration and Reform

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of the Secretary is announcing that the Secretarial Commission on Indian Trust Administration and Reform (the Commission) will hold a public meeting on December 6 and 7, 2012. During the public meeting, the Commission will hear from invited speakers about: management and administration of probate and real estate services administered through compacts and contracts; management and administration of natural resources held in trust; and trust reform, including other trust models and the trust relationship. The meeting will allow the Commission to gain insights and perspectives from members of the public. The Commission will also be hosting a youth outreach session on the evening of December 6, 2012, on the University of Washington campus to meet with young adults and college students on their ideas and recommendations to improve performance and services to trust beneficiaries.

DATES: The Commission's public meeting will begin at 8 a.m. and end at 5 p.m. on December 6, and begin at 8 a.m. and end at 4 p.m. on December 7, 2012. Members of the public who wish to attend in person should respond by December 4, 2012, to: *trustcommission@ios.doi.gov* to ensure adequate meeting packets will be made available. Members of the public who wish to participate via teleconference and/or webinar should respond by December 4, 2012, to: *trustcommission@ios.doi.gov* and information on how to register will be provided; virtual participation is limited to 100 participants. The Commission's public youth outreach session will be held from 7 p.m. to 9 p.m. on December 6, 2012; additional information will be available at: *http://www.doi.gov/cobell/commission/index.cfm.*

ADDRESSES: The public meeting will be held at the Double Tree Suites by Hilton Hotel Seattle Airport, 18740 International Boulevard, Seattle, Washington 98188. We encourage you to respond to *trustcommission@ios.doi.gov* by December 4, 2012. The public youth outreach session will be held on the University of Washington campus; further information on the location will be available at *http://www.doi.gov/cobell/commission/index.cfm.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Lizzie Marsters, Chief of Staff to the Deputy Secretary, Department of the Interior, 1849 C Street NW., Room 6118, Washington, DC 20240; or email to *Lizzie_Marsters@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretarial Commission on Indian Trust Administration and Reform was established under Secretarial Order No. 3292, dated December 8, 2009. The Commission plays a key role in the Department's ongoing efforts to empower Indian nations and strengthen nation-to-nation relationships.

The Commission will complete a comprehensive evaluation of the Department's management and administration of the trust assets within a two-year period and offer recommendations to the Secretary of the Interior on how to improve in the future. The Commission will:

(1) Conduct a comprehensive evaluation of the Department's management and administration of the trust administration system;

(2) Review the Department's provision of services to trust beneficiaries;

(3) Review input from the public, interested parties, and trust beneficiaries, which should involve conducting a number of regional listening sessions;

(4) Consider the nature and scope of necessary audits of the Department's trust administration system;

(5) Recommend options to the Secretary to improve the Department's management and administration of the trust administration system based on information obtained from the Commission's activities, including whether any legislative or regulatory changes are necessary to permanently implement the improvements; and

(6) Consider the provisions of the American Indian Trust Fund Management Reform Act of 1994 providing for the termination of the Office of the Special Trustee for American Indians, and make recommendations to the Secretary regarding termination.

Meeting Details

On Thursday, December 6, 2012, and Friday, December 7, 2012, the Commission will hold a meeting open to the public. The following items will be on the agenda.

Thursday, December 6, 2012

- Invocation;
- Welcome, introductions, agenda review;
- Commission operations reports and decisions;
- Commission review and discussion of preliminary recommendations;
- Public observations and comments regarding Commission recommendations;
- Panel session regarding real estate and probate;
- Panel session regarding natural resource assets;
- Status update on settlement;
- Commissioner reflections and insights from the day; and
- Review of action items from the today's discussion.

On the evening of Thursday, December 6, 2012, the Commission will host a youth outreach session from at 7 p.m. to 9 p.m. on the University of Washington campus to meet with young adults and college students on their ideas and recommendations to improve performance and services to trust beneficiaries. For additional information please refer to http://www.doi.gov/cobell/commission/index.cfm.

Friday, December 7, 2012

- Invocation;
- Welcome, introductions, agenda review;
- Presentation and discussion from BIA Budget Office;
- Panel session regarding trust reform and administration;
- Public comment regarding Commission discussion thus far;
- Planning for 2013 meetings;
- Commission discussion of insights and conclusions from panel speakers and preliminary discussion of how to integrate ideas into draft recommendations;
- Review action items, meeting accomplishments; and
- Closing blessing, adjourn.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. To review all related material on the Commission's work, please refer to *http://www.doi.gov/cobell/commission/index.cfm.* All meetings are open to the public.

Dated: November 5, 2012.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2012–27595 Filed 11–13–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N243; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a permit to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with respect to endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by December 14, 2012.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–84876A

Applicant: Andersen Air Force Base, Yigo, Guam

The applicant requests a recovery permit to remove and reduce to possession (collection of seed pods, seeds, flowers, cuttings, and seedlings) *Serianthes nelsonii* (Hayun lagu) in conjunction with captive propagation and future outplanting for the purpose of enhancing its survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority:

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: October 18, 2012.

Richard Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–27612 Filed 11–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2012–N183; FF06R06000–FXRS1266066CCP0S3–123]

Charles M. Russell National Wildlife Refuge and UL Bend National Wildlife Refuge, MT; Availability of Record of Decision for the Final Comprehensive Conservation Plan and Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the final comprehensive conservation plan (CCP) and final environmental impact statement (EIS) for Charles M. Russell and UL Bend National Wildlife Refuges (NWRs, Refuges).

ADDRESSES: You may view or obtain copies of the ROD, the final CCP and final EIS, or other project information by any of the following methods:

Agency Web site: Download a copy of the documents at *www.fws.gov/cmr/planning.*

Email: cmrplanning@fws.gov. Include ''Request copy of Charles M. Russell NWR ROD'' in the subject line of the message.

U.S. mail: Charles M. Russell NWR, P.O. Box 110, Lewistown, MT 59457.

In-Person Viewing or Pickup: Call 406–538–8706 to make an appointment during regular business hours at Charles M. Russell NWR Headquarters, Airport Road, Lewistown, MT 59457.

Local Libraries: The final documents are available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard Potts, Project Leader, at 406–538–8706 (phone), or Laurie Shannon, Planning Team Leader, 303–236–4317 (phone) or *laurie_shannon@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Charles M. Russell and UL Bend NWRs. We started this process through a notice in the **Federal Register** (72 FR 68174, December 4, 2007). Following a lengthy scoping and alternatives development period, we published a second notice in the **Federal Register** (75 FR 54381, September 7, 2010), announcing the availability of the draft CCP and draft EIS and our intention to hold public meetings, and requesting comments. We then published a third notice in the **Federal Register** (75 FR 67095, November 1, 2010), extending the comment period by 24 days to December 10, 2010.

Charles M. Russell and UL Bend NWRs encompass nearly 1.1 million acres, including Fort Peck Reservoir in north central Montana. The Refuges extend about 125 air miles west from Fort Peck Dam to the western edge at the boundary of the Upper Missouri Breaks National Monument. UL Bend NWR lies within Charles M. Russell NWR. In essence, UL Bend NWR is a

refuge within a refuge, and the two refuges are managed as one unit and referred to as Charles M. Russell NWR. Refuge habitat includes native prairie, forested coulees, river bottoms, and badlands. Wildlife is as diverse as the topography and includes Rocky Mountain elk, mule deer, white-tailed deer, pronghorn, Rocky Mountain bighorn sheep, sharp-tailed grouse, greater sage-grouse, Sprague's pipit, black-footed ferrets, prairie dogs, and more than 236 species of birds.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final CCP and final EIS for Charles M. Russell NWR and UL Bend NWR. We completed a thorough analysis of the environmental, social, and economic considerations associated with our actions. The ROD documents our selection of alternative D, the preferred alternative.

The CCP will guide us in managing and administering Charles M. Russell NWR and UL Bend NWR for the next 15 years. Alternative D, as we described in the final EIS/ROD, is the foundation for the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives and Selected Alternative

Our final CCP and final EIS (77 FR 26781; May 7, 2012) addressed several issues. To address these, we developed and evaluated the following alternatives: Alternative A—No Action, Alternative B—Wildlife Population Emphasis, Alternative C—Public Use and Economic Use Emphasis, and Alternative D—Ecological Processes Emphasis.

After consideration of 24,600 comments that we received on the draft CCP and draft EIS and several minor comments we received following the release of the final CCP and final EIS, we have selected alternative D—Ecological Processes Emphasis. It is the alternative that best meets the purposes of the refuges; the mission of the National Wildlife Refuge System; the vision and management goals set for the refuge; and also adheres to Service policies and guidelines. It considers the interests and perspectives of many agencies, organization, tribes, and the public. Additionally, it is the environmentally preferred alternative.

Under alternative D and in cooperation with our partners, we would use natural, dynamic, ecological processes, and management activities in a balanced, responsible manner to restore and maintain the biological diversity, biological integrity, and environmental health of the Refuge. Once natural processes are restored, a more passive approach (less human assistance) would be favored. There would be quality wildlife-dependent public uses and experiences. Economic uses would be limited when they are injurious to ecological processes.

Public Availability of Documents

In addition to the using any of the methods listed under **ADDRESSES**, you can view or obtain a copy of the final CCP and final EIS at any of the following public libraries:

Library	Address	Phone No.
Garfield County	228 E. Main, Jordan MT 59337	406–557–2297
Glasgow	408 3rd Avenue, Glasgow MT 59230	406–228–2731
Great Falls	301 2nd Avenue, Great Falls MT 59401	406–453–0349
Lewistown	701 W. Main, Lewistown MT 59457	406–538–5212
McCone County	1101 C Avenue, Circle, MT 59215	406–485–2350
Petroleum County	205 S. Broadway, Winnett, MT 59087	406–429–2451
Phillips County	10 S. 4th Street E., Malta, MT 59538	406–542–2407
Montana State University–Billings	1500 University Drive, Billings, MT 59101	406–657–2011
Montana State University–Bozeman	Roland R. Renne Library, Centennial Mall, Bozeman, MT 59717	406–994–3171
Montana State University–Havre	Northern Vande Bogart Library, Cowan Drive, Havre, MT 59501	406–265–3706
University of Montana	Mansfield Library, 32 Campus Drive, Missoula, MT 59812	406–243–6860
Colorado State University	Morgan Library, 501 University Avenue, Fort Collins, CO 80523	970–491–1841

Dated: July 27, 2012.

Noreen E. Walsh,

Acting Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–27610 Filed 11–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2012–N231; FF06R06000–FXRS1265066CCP0–123]

Establishment of Sangre de Cristo Conservation Area, Colorado and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has established the Sangre de Cristo Conservation Area as a unit of the National Wildlife Refuge System. The Service established the Sangre de Cristo Conservation Area on September 14, 2012, with the donation by Mr. Louis Bacon of an approximately 77,000-acre conservation easement on the Trinchera Ranch in Costilla County, Colorado.

ADDRESSES: A map depicting the approved boundary and other information regarding the Conservation Area is available on the Internet at *http://www.fws.gov/mountain-prairie/planning/.*

FOR FURTHER INFORMATION CONTACT: Dr. Mike Dixon, Planning Team Leader,

Division of Refuge Planning, USFWS, P.O. Box 25486, DFC, Denver, CO 80225. *http://www.fws.gov/mountain-prairie/planning/.*

SUPPLEMENTARY INFORMATION: The Service has established the Sangre de Cristo Conservation Area in south-central Colorado and far northern New Mexico, including portions of Costilla County, Colorado, and Taos County, New Mexico. The Service will conserve wildlife resources in the conservation area, primarily through the purchase of perpetual easements from willing sellers. These easements will connect and expand existing lands under conservation protection to the north and south of the conservation area.

The area's history of largely low-intensity agriculture is one of the key components to ensuring habitat integrity and wildlife resource protection. Based on anticipated levels of landowner participation, objectives for the conservation area are to protect 250,000 acres of habitat for Federal trust species. The conservation area is a landscape-scale effort to conserve populations of priority species in an approximately 1-million-acre region in the central Sangre de Cristo Mountains, the largest completely privately owned region of the southern Rocky Mountains. The prioritization for land protection will incorporate the elements of strategic habitat conservation (SHC) to ensure effective conservation. SHC entails strategic biological planning and conservation design, integrated conservation delivery, monitoring, and research at ecoregional scales.

This conservation area allows the Service to purchase conservation easements using the acquisition authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–j) and the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715–715d, 715e, 715f–r). The Federal money used to acquire conservation easements is from the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–4 through 11; funds received under this act are derived primarily from oil and gas leases on the Outer Continental Shelf, motorboat fuel taxes, and the sale of surplus Federal property), and the sale of Federal Duck Stamps [Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718–718j, 48 Stat. 452)]. Additional funding to acquire lands, water, or interests for fish and wildlife conservation purposes could be identified by Congress or donated by nonprofit organizations. The purchase of easements from willing sellers will be subject to available money.

The Service has involved the public, agencies, partners, and legislators throughout the planning process for the easement program. At the beginning of the planning process, the Service initiated public involvement for the proposal to protect habitats through acquisition of conservation easements for management as part of the Refuge System. The Service spent time discussing the proposed project with landowners; conservation organizations; Federal, State, and county governments; tribes; and other interested groups and individuals. Scoping meetings were held on March 29, 30, and 31, 2011, in Alamosa, Monte Vista, and Moffatt, respectively. These meetings were announced in local and regional media.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the Service prepared an environmental assessment (EA) that evaluated two alternatives and their potential impacts on the project area. The Service released the draft environmental assessment (EA) and LPP on May 9, 2012, for a 30-day public review period. The draft documents were made available to Federal elected officials and agencies, State elected officials and agencies, 17 Native American tribes with aboriginal or tribal interests, local media, and other members of the public that were identified during the scoping process.

In addition, the Service held three public meetings on May 14, 15, and 16, 2012, at Alamosa, San Luis, and Moffatt, CO, respectively. These meetings were announced in advance in local and regional media. Approximately 50 landowners, citizens, and elected representatives attended the meetings. The Service received 14 letters from agencies, organizations, and members of the public. After all comments were received, they were reviewed, added to the administrative record, and, if substantial, incorporated into the environmental assessment (EA).

Based on the documentation contained in the environmental assessment (EA), a Finding of No Significant Impact was signed on August 1, 2012, for the establishment of the Sangre de Cristo Conservation Area.

Dated: November 5, 2012.

Noreen E. Walsh,

Acting, Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–27611 Filed 11–13–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on December 3, 2012, from 2:30 p.m. to 5:00 p.m. EST. The meeting will be held via web conference and teleconference.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Leadership Dialogue
—National Address Database
—Geospatial Priorities
—NGAC Subcommittee Activities
—FGDC Update

Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703–648–6283, *amaher@fgdc.gov*). Meeting registrations are due by November 28, 2012. Meeting information (web conference and teleconference instructions) will be provided to registrants prior to the meeting. While the meeting will be open to the public, attendance may be limited due to web conference and teleconference capacity.

The meeting will include an opportunity for public comment. Attendees wishing to provide public comment should register by November 28. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703–648–6283, *amaher@fgdc.gov*). Comments may also be submitted to the NGAC in writing.

DATES: The meeting will be held on December 3, 2012, from 2:30 p.m. to 5:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *www.fgdc.gov/ngac.*

Dated: November 7, 2012.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2012–27619 Filed 11–13–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L10200000.PH0000.L.X.SS.036H0000.13XL1109AF; HAG13–0042]

Southeast Oregon Resource Advisory Council; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Southeast Oregon RAC will tentatively hold public meetings January 28–29, 2013, in Lakeview, Oregon, April 22–23, 2013, in Ontario, Oregon, and June 17–18, 2013, in Burns, Oregon. Public comment periods will be scheduled each day of each meeting. Logistical details and a complete agenda for each session will be available 2–4 weeks prior to the session. Meeting dates, times, locations and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Southeast Oregon RAC.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, Public Affairs Specialist, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424, (541) 573–4519, or email *tmartina@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon.

Tentative agenda items for the upcoming meetings include but are not limited to: Travel management planning; Cooperative Conservation Agreements (CCA) and CCA's with Assurances; Greater Sage Grouse habitat and conservation; Resource Management Plan amendments; wildfires and stabilization and rehabilitation work; vegetation treatments, management, and planning efforts; wilderness, wilderness study areas, and wilderness characteristics inventories; energy developments on public lands; and, wild horses and wild horse management. Any other matters that may reasonably come before the Southeast Oregon RAC may also be addressed. All meetings are open to the public in their entirety. Information to be distributed to the Southeast Oregon RAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Brendan Cain,

BLM Burns District Manager.

[FR Doc. 2012–27616 Filed 11–13–12; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–752]

Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 47) granting Complainants' unopposed motion for leave to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 23, 2010, based on a complaint filed by Motorola Mobility, Inc. of Libertyville, Illinois and General Instrument Corporation of Horsham, Pennsylvania (collectively ''Motorola''). 75 *FR* 80843 (Dec. 23, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gaming and entertainment consoles, related software, and components thereof by reason by reason of infringement of various claims of United States Patent Nos. 6,069,896; 7,162,094; 6,980,596; 5,357,571; and 5,319,712. The notice of investigation named Microsoft Corporation of Redmond, Washington as the sole respondent. *Id.*

On October 4, 2012, Motorola filed a motion for leave to amend the complaint and notice of investigation to reflect a corporate name change of Motorola Mobility, Inc. from Motorola Mobility, Inc. to Motorola Mobility LLC. No responses to the motion were received.

On October 10, 2012, the ALJ issued the subject ID, granting the motion. The ALJ found that, pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)), good cause exists to amend the complaint and notice of investigation. None of the parties petitioned for review of the ID.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 8, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–27629 Filed 11–13–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–848]

Certain Radio Frequency Integrated Circuits and Devices Containing Same; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 9) granting the complainant's unopposed motion to terminate the investigation in its entirety based on the withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 13, 2012, based on a complaint filed by Peregrine Semiconductor Corporation (''Peregrine'') of San Diego, California. 77 FR 35427 (Jun. 13, 2012). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent Nos. 7,910,993; 7,123,898; 7,460,852; 7,796,969; and 7,860,499. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named as respondents RF Micro Devices, Inc. of Greensboro, North Carolina; Motorola Mobility, Inc. of Libertyville, Illinois; HTC Corporation of Taiwan; and HTC America, Inc. of Bellevue, Washington (collectively ''Respondents'').

On October 11, 2012, complainant Peregrine filed an unopposed motion pursuant to Commission Rule 210.21(a)(1) to terminate the investigation on the basis of withdrawal of the complaint. The motion stated that neither Respondents nor the Commission Investigative Staff oppose the motion. The motion also stated that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of this investigation. The motion requested that the procedural schedule in the investigation be suspended pending a ruling by the Commission on the subject ID.

On October 15, 2012, the ALJ issued the subject ID granting the motion terminating the investigation in its entirety and staying the procedural schedule pending the Commission's final determination on the motion. No petitions for review were received.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: November 8, 2012.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2012–27645 Filed 11–13–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105 and 1106 (Review)]

Lemon Juice From Argentina and Mexico; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether termination of the suspended investigations on lemon juice from Argentina and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 5, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 5, 2012, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (77 FR 45653, August 1, 2012) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy,

and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 8, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–27640 Filed 11–13–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Insurance Claim Form

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Health Insurance Claim Form,'' (Form OWCP–1500) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: Submit comments on or before December 14, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: OWCP and contractor bill payment staff use Form OWCP–1500 to process bills for medical services provided by medical professionals other than medical services provided by hospitals, pharmacies, or certain other medical providers. This information is required to pay health care providers for services rendered to injured employees covered under OWCP-administered programs. Appropriate payment cannot be made without documentation of the medical services provided by the health care provider billing the OWCP. The OWCP uses information obtained to identify the patient and determine benefit eligibility. The OWCP also uses the information to decide whether services and supplies received are covered by OWCP programs and to assure that proper payment is made.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0044. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 27, 2012 (77 FR 51828).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0044. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Health Insurance Claim Form.

OMB Control Number: 1240–0044.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 71,304.

Total Estimated Number of Responses: 3,036,067.

Total Estimated Annual Burden Hours: 322,838.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 7, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–27609 Filed 11–13–12; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 12–097]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Summer of Innovation (SoI) Project FY2013 will engage and support external partners in the delivery of science, technology, engineering, and math (STEM) opportunities to youth in underrepresented populations through a summer camp/summer learning program. The intent is to increase interest and participation in STEM. The NASA SoI FY2013 project will focus on rising 6th through 8th grade students. This clearance request pertains to the administration of parent surveys, youth surveys, and teacher focus groups. The data collected will enable NASA to (1) evaluate the program model for improvement opportunities, and (2) collect outcome data to assess the program model's effectiveness in meeting the intended objectives. Surveys are designed to obtain the minimum information required to meet study objectives.

II. Method of Collection

Electronic and paper.

III. Data

Title: NASA Summer of Innovation Project.

OMB Number: 2700–0150.

Type of review: Revision of currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6,838.

Estimated Time Per Response: Variable.

Estimated Total Annual Burden Hours: 1,173 hours.

Estimated Total Annual Cost: $219,119.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2012–27625 Filed 11–13–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 14, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by

the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Missile Defense Agency (N1–565–12–1, 30 items, 25 temporary items). Comprehensive schedule covering various administrative records relating to policy, legal affairs, environmental safety, buildings, and publicity. Proposed for permanent retention are records relating to policies and procedures, executive correspondence, legal opinions, major building projects, environmental compliance, and news releases.

2. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0005, 4 items, 3 temporary items). Records of the Office of the Assistant Secretary for Preparedness and Response, including records documenting the office's participation in public health and medical response efforts to small-scale disasters and interagency emergency programs led by other agencies. Proposed for permanent retention are case files for public health and medical response efforts to historically significant disasters and crises, including logs, reports, orders, and plans.

3. Department of Health and Human Services, Office of the Secretary (DAA–0468–2012–0006, 4 items, 3 temporary items). Records of the Office of the Assistant Secretary for Preparedness and Response, including records that document the definitive medical response efforts for small-scale disasters. Proposed for permanent retention are historically significant definitive disaster reports.

4. Department of Justice, Civil Rights Division (DAA–0060–2011–0023, 1 item, 1 temporary item). Master files of an electronic information system used to track workflow for processing grant applications.

5. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0002, 2 items, 2 temporary items). Master files and documentation of an electronic information system used to maintain information relating to frivolous tax returns and penalties.

6. Department of Treasury, Internal Revenue Service (DAA–0058–2012–0008, 2 items, 2 temporary items). Master files and documentation of an electronic information system used to analyze and reduce security risks for internal information technology systems.

7. Environmental Protection Agency, Agency-wide (DAA–0412–2013–0001, 3 items, 3 temporary items). Records relating to security management, including the physical protection of personnel, assets, and facilities, but not activities related to securing data and information systems scheduled separately.

Dated: November 5, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–27677 Filed 11–13–12; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that fifteen meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506 as follows (ending times are approximate):

Media Arts (application review): In room 730. This meeting will be closed.

Dates: November 27, 2012; 9:00 a.m. to 6:00 p.m. EST.

Music (application review): Virtual, from Room 716. This meeting will be closed.

Dates: November 27, 2012; 1:00 p.m. to 3:00 p.m. EST.

Literature (application review): In room 716. This meeting will be closed.

Dates: November 28, 2012, from 9:00 a.m. to 6:30 p.m. EST.

Media Arts (application review): In room 730. This meeting will be closed.

Dates: November 28, 2012, from 9:00 a.m. to 6:00 p.m. EST.

Music (application review): In room 714. This meeting will be closed.

Dates: November 28, 2012. From 9:00 a.m. to 2:00 p.m. EST.

Literature (application review): In room 716. This meeting will be closed.

Dates: November 29, 2012; 9:00 a.m. to 6:30 p.m. EST.

Music (application review): In room 714. This meeting will be closed.

Dates: November 29, 2012. From 9:00 a.m. to 3:00 p.m. EST.

Arts Education (application review): In room 716. This meeting will be closed.

Dates: December 3, 2012. From 9:00 a.m. to 6:00 p.m. EST.

Media Arts (application review): In room 730. This meeting will be closed.

Dates: December 3, 2012. From 9:00 a.m. to 6:00 p.m. EST.

Media Arts (application review): In room 730. This meeting will be closed.

Dates: December 4, 2012. From 9:00 a.m. to 6:00 p.m. EST.

Arts Education (application review): In room 627. This meeting will be closed.

Dates: December 4–5, 2012. From 9:00 a.m. to 5:30 p.m. EST on both days.

Presenting (application review): In room 714. This meeting will be closed.

Dates: December 6, 2012. From 9:00 a.m. to 5:30 p.m. EST.

Visual Arts (application review): In room 716. This meeting will be closed.

Dates: December 6, 2012. From 9:00 a.m. to 5:30 p.m. EST.

Visual Arts (application review): In room 716. This meeting will be closed.

Dates: December 7, 2012. From 9:00 a.m. to 5:30 p.m. EST.

Design (application review): In room 714. This meeting will be closed.

Dates: December 11, 2012; 9:00 a.m. to 5:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in

confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: November 8, 2012.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2012–27622 Filed 11–13–12; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0154]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 14, 2012.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Part 140 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Financial Protection Requirements and Indemnity Agreements.''

3. *Current OMB approval number:* 3150–0039.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On occasion, as needed for the licensees to meet their responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

6. *Who will be required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR part 50, or a holder of a combined license under 10 CFR part 52, and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

7. *An estimate of the number of annual responses:* 1.67.

8. *The estimated number of annual respondents:* 1.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 8.

10. *Abstract:* Part 140 of the NRC's regulations specifies information to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, as amended.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 14, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 7th day of November 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–27641 Filed 11–13–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483; NRC–2012–0275]

Callaway Plant, Unit 1; Application for Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

ADDRESSES: Please refer to Docket ID NRC–2012–0275 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0275. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Carl F. Lyon, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2296; email: *Fred.Lyon@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Union Electric Co., (the licensee) to withdraw its application dated June 30, 2011 (ADAMS Accession No. ML111820367), as supplemented by letter dated September 10, 2012 (ADAMS Accession No. ML1225A040), for proposed amendment to Facility Operating License No. NPF–30 for the Callaway

Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would have revised Technical Specification (TS) 3.6.6, ''Containment Spray and Cooling Systems.'' Specifically, the amendment would have revised Surveillance Requirement (SR) 3.6.6.3 for verifying the minimum required containment cooling train cooling water flow rate. Rather than require verifying each containment cooling train has a cooling water flow rate greater than or equal to 2200 gallons per minute, TS SR 3.6.6.3 would have been revised to require verification that the flow rate is capable of being ''within limits'' for achieving the heat removal rate assumed in the Callaway Plant safety analyses.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 1, 2011 (76 FR 67491). However, by letter dated October 26, 2012 (ADAMS Accession No. ML12305A202), the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 30, 2011, the supplement dated September 10, 2012, and the license's letter dated October 26, 2012, which withdrew the application for license amendment.

Dated at Rockville, Maryland, this 5th day of November 2012.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–27626 Filed 11–13–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of November 12, 19, 26, December 3, 10, 17, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 12, 2012

There are no meetings scheduled for the week of November 12, 2012.

Week of November 19, 2012—Tentative

There are no meetings scheduled for the week of November 19, 2012.

Week of November 26, 2012—Tentative

Tuesday, November 27, 2012

9:00 a.m. Briefing on Operator Licensing Program (Public Meeting) (Contact: Jack McHale, 301–415–3254).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, November 28, 2012

9:00 a.m. Discussion of Management and Personnel Issues, (Closed—Ex. 2 & 6).

2:00 p.m. Discussion of Management and Personnel Issues, (Closed—Ex. 1, 2 & 6).

Thursday, November 29, 2012

2:30 p.m. Briefing on Security Issues (Closed—Ex. 1).

Week of December 3, 2012—Tentative

Thursday, December 6, 2012

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards, (ACRS) (Public Meeting), (Contact: Ed Hackett, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of December 10, 2012—Tentative

There are no meetings scheduled for the week of December 10, 2012.

Week of December 17, 2012—Tentative

There are no meetings scheduled for the week of December 17, 2012.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: November 8, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–27740 Filed 11–9–12; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; September 2012

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from September 1, 2012, to September 30, 2012.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Executive Resources and Employee Development, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes annually a consolidated listing of all Schedule A, B, and C appointing authorities current as of June 30 as a notice in the **Federal Register**.

Schedule A

No schedule A authorities to report during September 2012.

Schedule B

No schedule B authorities to report during September 2012.

Schedule C

The following Schedule C appointing authorities were approved during September 2012.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF EDUCATION ...	Office of the Secretary	Confidential Assistant	DB120035	9/7/2012
	Office of Innovation and Improvement.	Special Assistant	DB120091	9/13/2012
	Office of Communications and Outreach.	Confidential Assistant	DB120089	9/21/2012
GENERAL SERVICES ADMINISTRATION.	Office of the Administrator	Deputy Press Secretary	GS120026	9/21/2012
	Northwest/Arctic Region	Special Assistant	GS120027	9/21/2012
DEPARTMENT OF HOMELAND SECURITY.	Office of the Assistant Secretary for Policy.	Confidential Assistant	DM120169	9/11/2012
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Deputy Secretary	Senior Advisor	DU120044	9/5/2012
DEPARTMENT OF JUSTICE	Civil Division	Counsel	DJ120095	9/11/2012
	Office of the Associate Attorney General.	Counsel and Chief of Staff	DJ120096	9/11/2012
	Environment and Natural Resources Division.	Special Assistant and Counsel	DJ120097	9/11/2012
	Civil Rights Division	Senior Counsel	DJ120098	9/11/2012
SELECTIVE SERVICE SYSTEM	Office of the Director	Chief of Staff	SS120004	9/21/2012
DEPARTMENT OF STATE	Office of Global Food Security	Special Assistant	DS120120	9/13/2012
	Office of Global Women's Issues ...	Staff Assistant	DS120117	9/21/2012
DEPARTMENT OF THE TREASURY.	Assistant Secretary for Financial Institutions.	Policy Analyst	DY120120	9/7/2012
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of the Chairman	Executive Assistant	TC120009	9/11/2012
	Office of the Chairman	Confidential Assistant	TC120010	9/11/2012
	Office of the Chairman	Staff Assistant (Legal)	TC120011	9/11/2012

The following Schedule C appointing authorities were revoked during September 2012.

Agency	Organization	Position title	Authorization number	Vacate date
DEPARTMENT OF COMMERCE ...	Assistant Secretary for Market Access and Compliance.	Senior Advisor	DC120139	9/4/2012
	Office of Executive Secretariat	Confidential Assistant	DC120057	9/7/2012
	Office of the General Counsel	Deputy General Counsel for Strategic Initiatives.	DC110125	9/8/2012
DEPARTMENT OF EDUCATION ...	Office of the Secretary	Confidential Assistant	DB090111	9/8/2012
	Office of Communications and Outreach.	Deputy Assistant Secretary for Communication Development.	DB090079	9/22/2012
DEPARTMENT OF ENERGY	National Nuclear Security Administration.	Deputy Press Secretary	DE110135	9/8/2012
DEPARTMENT OF HOMELAND SECURITY.	Office of Assistant Secretary for Legislative Affairs.	Senior Advisor to the Assistant Secretary for Legislative Affairs.	DM110010	9/27/2012
	Office of the Assistant Secretary for Intergovernmental Affairs.	State and Local Coordinator	DM110224	9/28/2012
DEPARTMENT OF JUSTICE	Civil Division	Counsel	DJ090227	9/22/2012
	Environment and Natural Resources Division.	Special Assistant	DJ100022	9/22/12
DEPARTMENT OF THE AIR FORCE.	Office of the General Counsel	Special Assistant	DF090046	9/15/2012
DEPARTMENT OF THE INTERIOR	Secretary's Immediate Office	Special Assistant	DI120018	9/8/2012
DEPARTMENT OF THE NAVY	Department of the Navy	Special Assistant	DN110016	9/8/2012
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Secretary and Deputy	Special Assistant to the Deputy Secretary.	DV110007	9/22/2012
OFFICE OF THE SECRETARY OF DEFENSE.	Office of Principal Deputy Under Secretary for Policy.	Staff Assistant	DD090087	9/24/2012

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

John Berry

Director. U.S. Office of Personnel Management.

[FR Doc. 2012–27679 Filed 11–13–12; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–16 and CP2013–15; Order No. 1532]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 48 to the competitive product list. This notice informs the public of the filing,

invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 15, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 48 to the competitive product list.[1] The Postal Service indicates that the instant contract will replace the contract that is the subject of Docket Nos. MC2010–1 and CP2010–1. *Id.* at 1. It asserts that Priority Mail Contract 48 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* The Request has been assigned Docket No. MC2013–16.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–15.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective the day after the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 3. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–16 and CP2013–15 to consider the Request pertaining to the proposed Priority Mail Contract 48 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 15, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–16 and CP2013–15 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 15, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–27576 Filed 11–13–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 48 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data (November 5, 2012).

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–15 and CP2013–14; Order No. 1531]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 26 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 15, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add First-Class Package Service Contract 26 to the competitive product list.[1] The Postal Service asserts that First-Class Package Service Contract 26 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2013–15.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–14.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all regulatory approvals. *Id.* at 2. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–15 and CP2013–14 to consider the Request pertaining to the proposed First-Class Package Service Contract 26 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 15, 2012. The public portions of these filings can be accessed via the Commission's Web Site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–15 and CP2013–14 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 15, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–27575 Filed 11–13–12; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add First-Class Package Service Contract 26 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data (November 5, 2012).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Schedule 14D–1F, OMB Control No. 3235–0376, SEC File No. 270–338.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Schedule 14D–1F (17 CFR 240.14d–102) is a form that may be used by any person making a cash tender or exchange offer (the ''bidder'') for securities of any issuer, incorporated or organized under the laws of Canada or any Canadian province or territory, that is a foreign private issuer and less than 40% of the outstanding class securities of such issuer's that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in securities of Canadian issuers. The information required to be filed with the Commission provides security holders with material information regarding the bidder as well as the transaction so that they may make informed investment decisions. The information provided is mandatory and all information is made available to the public upon request. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 5 respondents annually for a total reporting burden of 10 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27601 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form T–4; OMB Control No. 3235–0107, SEC File No. 270–124.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–4 (17 CFR 269.4) is a form used by an issuer to apply for an exemption under Section 304(c) (15 U.S.C. 77ddd(c)) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–4 is filed on occasion. The information required by Form T–4 is mandatory. This information is publicly available on EDGAR. Form T–4 takes approximately 5 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of the 5 hours per response (1 hour) is prepared by the filer for a total annual reporting burden of 3 hours (1 hour per response × 3 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27602 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form T–3; OMB Control No. 3235–0105, SEC File No. 270–123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 is filed on occasion. The information required by Form T–3 is mandatory. This information is publicly available on EDGAR. Form T–3 takes approximately 43 hours per response to prepare and is filed by approximately 78 respondents. We estimate that 25% of the 43 hours per response (11 hours) is prepared by the filer for a total annual reporting burden of 858 hours (11 hours per response × 78 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27603 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form T–2, OMB Control No. 3235–0111, SEC File No. 270–122.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee under the Trust Indenture Act of 1939. The information is used to determine whether the individual is qualified to serve as a trustee under the indenture. Form T–2 is filed on occasion. The information required by Form T–2 is mandatory. This information is publicly available on EDGAR. Form T–2 takes approximately 9 hours per response to prepare and is filed by approximately 36 respondents. We estimate that 25% of the 9 hours per response (2 hours) is prepared by the filer for a total annual reporting burden

of 72 hours (2 hours per response × 36 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27604 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form T–1; OMB Control No. 3235–0110, SEC File No. 270–121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. This information is publicly available on EDGAR. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 13 respondents. We estimate that 25% of the 15 hours (4 hours) is prepared by the company for a total annual reporting burden of 52 hours (4 hours per response × 13 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27606 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form F–80; OMB Control No. 3235–0404, SEC File No. 270–357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F–80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. The information provided is mandatory and all information is made available to the public upon request. Form F–80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual burden of 8 hours. The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27607 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Form 18,

OMB Control No. 3235–0121, SEC File No. 270–105.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 18 (17 CFR 249.218) is a registration form used for by a foreign government or political subdivision to register securities for listing on a U.S. exchange. The information collected is intended to ensure that the information required by the Commission to be filed permits verification of compliance with securities law requirements and assures the public availability of the information. The information provided is mandatory and all information is made available to the public upon request. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total of 40 annual burden hours. It is estimated that 100% of the total reporting burden is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

November 7, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27608 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68171; File No. SR–CBOE–2012–087]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Amend Rule 17.2 Regarding Requests for Data Related to Exchange Reviews

November 6, 2012.

I. Introduction

On September 4, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 17.2 (Complaint and Investigation) regarding the furnishing of data requested with respect to any review conducted by the Exchange pursuant to that Rule. The proposed rule change was published for comment in the **Federal Register** on September 24, 2012.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Rule 17.2 (Complaint and Investigation) to address the furnishing of data to the Exchange by a Trading Permit Holder (''TPH'') in connection with a regulatory review conducted by the Exchange. Specifically, the Exchange proposes to add Interpretations and Policies .04, which provides that ''[i]n addition to the existing obligation under Exchange rules regarding the production of books and records, each TPH or TPH organization shall furnish upon request, in the manner and standard electronic format prescribed by the Exchange, data concerning orders, transactions, and positions, including related hedges and offsets, in relation to a regulatory review conducted by the Exchange.''

In the Notice, the Exchange stated that it currently requests and receives certain trade data from TPHs and TPH organizations on an ad hoc basis in connection with its regulatory responsibilities as a registered exchange. TPHs and TPH organizations provide such data to the Exchange in a variety of different manners and formats, and sometimes in a piecemeal manner.[4] Because the form of the submitted information can be highly variable and the manner of submission is not standard, the Exchange represented that the Exchange's Regulatory Division expends considerable resources in re-organizing and systematizing the information in order to be able to perform its review and analysis. In order to address this inefficiency, the Exchange now proposes to require TPHs to furnish, upon request, data in a standard manner and format as prescribed by the Exchange.

In the Notice, the Exchange represented that this change would allow the Exchange to develop uniform procedures and forms for the submission of data concerning orders, transactions, and positions, including related hedges and offsets.[5] The Exchange stated that the existence of a standard format for the submission of the data would allow the TPHs to better prepare for regulatory responses and would allow the Exchange regulatory staff to review and analyze the requested data in a more efficient and organized manner which in turn will expedite such review and analysis.[6] Pursuant to the new rule provision, the Exchange will publish by Regulatory Circular the required layout for the data that would be submitted to the Exchange.[7]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [8] and the rules and regulations thereunder applicable to a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67879 (September 18, 2012), 77 FR 58897 (''Notice'').

[4] According to the Exchange, the data which the Exchange currently receives is provided in a comma-separated values format, and includes, when applicable, separate data fields for trade date, order entry time (milliseconds), cancel time (milliseconds), execution time (milliseconds), unique ticker symbol, side, execution price, event type, unique account identification, user ID, order ID, broker location, quantity, locate source for short sale, number of shares remaining after a partial execution, and the code of the exchange to which an order was routed.

[5] *See* Notice, *supra* note 3, at 58898.

[6] *Id.*

[7] *Id.* The Exchange represented that it will not enforce compliance with Interpretations and Policies .04 until the Exchange has announced an implementation plan, including a subsequent compliance date, to its members, and that the Exchange expects to announce such implementation plan via a Regulatory Circular during the fourth calendar quarter of 2012. *Id.* The Exchange believes that the intervening period between the announcement of the implementation plan and the compliance date will allow TPHs time to prepare to comply. *Id.*

[8] 15 U.S.C. 78f.

national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that CBOE's proposed rule change is designed to facilitate the production of uniform data by TPHs, which will permit the Exchange's regulatory staff to make use of the data more readily than is currently the case. In particular, Exchange staff will no longer have to take time to reconcile data that is submitted in disparate formats. In turn, this should benefit the Exchange's regulatory reviews by permitting more efficient use of Exchange resources. To this extent, the rule change is designed to help prevent fraudulent and manipulative practices, consistent with the Act, because obtaining data from TPHs in a uniform format will aid the Exchange's regulatory staff in the exercise of its regulatory authority. New Interpretations and Policies .04 should help facilitate the Exchange's decision making regarding determining causes of action and considering the appropriate regulatory response to a complaint or investigation, which will further the Act's goal of promoting just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2012–087) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27574 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68174; File No. SR–NYSEArca-2012–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Options Regulatory Fee and To Revise the Circumstances Under Which NYSE Arca, Inc. Will Collect the Options Regulatory Fee

November 7, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 1, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to increase its Options Regulatory Fee (''ORF'') and to revise the circumstances under which the Exchange will collect the ORF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase its ORF and to revise the circumstances under which the Exchange will collect the ORF.

Background

The ORF, which is currently $0.004 per contract, is assessed by the Exchange on each OTP Holder or OTP Firm for all options transactions executed or cleared by the OTP Holder or OTP Firm that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, i.e., transactions that clear in the customer account of the OTP Holder's or OTP Firm's clearing firm at OCC, regardless of the marketplace of execution.[4] In other words, the Exchange imposes the ORF on all customer-range transactions executed by an OTP Holder or OTP Firm even if the transactions do not take place on the Exchange. In the case where an OTP Holder or OTP Firm executes a transaction and a different OTP Holder or OTP Firm clears the transaction, the ORF is assessed to the OTP Holder or OTP Firm who executes the transaction. In the case where a non-OTP Holder or non-OTP Firm executes a transaction and an OTP Holder or OTP Firm clears the transaction, the ORF is assessed to the OTP Holder or OTP Firm who clears the transaction.

The dues and fees paid by OTP Holders and OTP Firms go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. In particular, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of OTP Holder and OTP Firms, including performing routine surveillance and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange monitors the amount of revenue collected from the ORF so that, in combination with other regulatory fees and fines, it does not exceed regulatory costs. The ORF is collected indirectly from OTP Holders and OTP Firms through their clearing firms by OCC on behalf of the Exchange.

Proposed Change

The Exchange proposes to (1) increase the ORF from $0.004 per contract to

[4] *See* Securities Exchange Act Release No. 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR–NYSEArca–2011–20).

$0.005 per contract in order to recoup increased regulatory expenses while also monitoring the revenue collected so that the ORF will not exceed such expenses, and (2) revise the circumstances in which the Exchange will collect the ORF from OTP Holders and OTP Firms. Transaction volumes across the industry have declined, thereby reducing ORF revenue, but the Exchange's regulatory expenses have not declined. The Exchange believes that revenue generated from the proposed ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF so that, in combination with the Exchange's other regulatory fees and fines, it does not exceed regulatory costs. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a proposed rule change to the Commission.[5]

Additionally, the Exchange proposes to revise the manner in which it assesses the ORF. Currently, upon becoming an OTP Holder or OTP Firm, a participant immediately becomes liable for the ORF. In certain instances, particularly at the outset of becoming an OTP Holder or OTP Firm, a participant may be registered with the Exchange prior to obtaining the requisite technological certification needed to act as a Floor Broker, Market Maker, Clearing Member or Order Flow Provider. The Exchange believes that it is not equitable to assess the ORF on an OTP Holder or OTP Firm that, prior to initially satisfying certain technology requirements, is not capable of availing itself of the benefits of its status as an OTP Holder or OTP Firm.[6] The Exchange does not desire to assess the ORF on such OTP Holders or OTP Firms until they have satisfied applicable technological requirements necessary to commence operations on the Exchange. The proposed change will have no effect on the assessment of fees for current OTP Holders or OTP Firms that are fully certified to transact business on the Exchange, as described above. The Exchange notes that at least one other exchange has such a provision for assessing the options regulatory fee after satisfaction of applicable technology requirements.[7]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding the ORF and that the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change. The Exchange proposes to implement these changes on December 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Exchange believes that the proposal is reasonable because the Exchange's revenue from the collection of the ORF has declined due to a decrease in industry volume, but the Exchange's regulatory expenses have not declined. As described above, through the ORF the Exchange seeks to recover the costs of supervising and regulating OTP Holders and OTP Firms, including performing routine surveillance and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The proposed ORF increase will help to maintain the total revenue collected to offset these regulatory expenses, but would not exceed those regulatory costs. The Exchange further notes that another options exchange has raised its options regulatory fee to $0.0065 per contract, so the Exchange's proposed ORF of $0.005 per contract will still be below that level.[10]

The Exchange believes that the proposed ORF increase is equitable and not unfairly discriminatory because it is objectively allocated to all OTP Holder and OTP Firms on all of their transactions that clear in the customer range at OCC. Moreover, the Exchange believes that the ORF is equitable and not unfairly discriminatory because it results in fees being charged to those OTP Holder and OTP Firms that require more Exchange regulatory services based on the amount of customer options business they conduct. In this regard, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity. Surveillance and regulation of non-customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-customer component of its regulatory program. As such, the Exchange proposes to continue to assess the ORF to those OTP Holder and OTP Firms that will require more Exchange regulatory services based on the amount of customer options business they conduct.[11]

The Exchange believes that the ORF will continue to be equitable and not unfairly discriminatory because the fee increase is objectively allocated to all OTP Holders and OTP Firms. The only OTP Holders or OTP Firms that would not pay the fee will be those that have not yet achieved the technical certifications that are needed to actually begin acting as a Floor Broker, Market Maker, Clearing Member or Order Flow Provider on the Exchange. The Exchange believes that this exception is reasonable, equitable and not unfairly discriminatory. Not assessing the ORF on an OTP Holder or OTP Firm that is not yet able to act in the capacity for which it is attempting to obtain certification is reasonable because the OTP Holder or OTP Firm is not yet able to generate the revenue associated with serving in that capacity. In this respect, it is equitable and not unfairly discriminatory to not begin charging the ORF until the OTP Holder or OTP Firm can generate the revenue to pay the fee. It is also equitable and not unfairly discriminatory because it will apply in an objective manner to all similarly situated OTP Holders and OTP Firms.

As noted above, the Exchange will continue to monitor the amount of revenue collected from the ORF so that, in combination with its other regulatory fees and fines, it does not exceed regulatory costs. If the Exchange determines that regulatory revenues

[5] The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority, Inc. (''FINRA'') under an SEC Rule 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation. *See supra* note 4.

[6] The Exchange anticipates that any delay in satisfying applicable technological requirements necessary to commence operations on the Exchange would be brief.

[7] *See* Securities Exchange Act Release No. 62804 (August 31, 2010), 75 FR 54688 (September 8, 2010) (SR–BX–2010–060).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities Exchange Act Release No. 67597 (August 6, 2012), 77 FR 47887 (August 10, 2012) (SR–CBOE–2012–065).

[11] The ORF is not charged for orders that clear in categories other than the customer range (e.g., market maker orders) because OTP Holders or OTP Firms incur the costs of acquiring trading permits and through these permits are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

exceed regulatory costs, the Exchange will adjust the ORF by submitting a proposed rule change to the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca-2012–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–118, and should be submitted on or before December 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27597 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68178; File No. SR–CBOE–2012–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 26, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to remove dividend spreads from the list of strategy executions for which fee caps apply. Under the Exchange's current Fees Schedule, Market-maker, Clearing Trading Permit Holder, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at $1,000 for a number of strategy executions.[3] The cap applies to each strategy execution executed on the same trading day in the same option class. Transaction fees for these strategies are further capped at $25,000 per month per initiating Trading Permit Holder or Clearing Trading Permit Holder (both caps described herein collectively as the ''Strategy Caps'').[4] The Strategy Caps

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Footnote 13.

[4] *Id.*

may provide an incentive to engage in the strategy executions.

One strategy execution listed is a ''dividend strategy'', which is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.[5] Dividend strategy transactions are only executed by Market-Makers. The Exchange proposes to remove dividend strategies from the list of strategy executions that are subject to the Strategy Caps. The Exchange has determined that it does not wish to continue to provide an incentive via its Fees Schedule to engage in dividend strategy trading because this strategy may encourage high volumes of trading of certain securities near the ex-dividend date and present operational risks to market participants with respect to clearing, exercise, and assignment or other issues that may prevent the market participant from the timely exercise of call options and collecting the dividend owed. As such, the Exchange proposes to remove references to dividend strategies from the Strategy Caps described in Footnote 13 of the Fees Schedule. The definition of ''dividend strategy'' will be removed from Footnote 13 as will all references to dividend strategies, including references regarding the Strategy Caps and Index License surcharge fees.

Footnote 11 of the CBOE Fees Schedule states that transaction fees and contract volume resulting from any of the strategies defined in Footnote 13 will not apply towards reaching the Exchange's Clearing Trading Permit Holder Fee Cap in all Products Except SPX, SRO, VIX or other Volatility Indexes, OEX or XEO (the ''CTPH Fee Cap'') and CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the ''CTPH Sliding Scale'') volume thresholds.[6] By removing dividend strategies from the list of strategy executions described in Footnote 13, it would appear as though dividend strategy executions would begin to apply towards reaching the CTPH Fee Cap and CTPH Sliding Scale volume thresholds. However, because only Market-Makers execute dividend strategy trades and the CTPH Fee Cap and CTPH Sliding Scale both only apply to Clearing Trading Permit Holders, it would be impossible for dividend strategy executions to apply towards reaching the CTPH Fee Cap and CTPH Sliding Scale volume thresholds. Therefore, no changes need to be made to the Fees Schedule regarding dividend strategy executions and the CTPH Fee Cap and CTPH Sliding Scale.

The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed change. The proposed change is to take effect on November 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that the proposed change is reasonable because the Strategy Caps may provide an incentive to engage in dividend spreads and the Exchange has determined that it no longer wishes to offer any potential incentive via its Fees Schedule in light of the operational risks that dividend spreads may present. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally to all market participants and because the remaining strategy executions that would continue to be subject to the fee caps do not present the same type of potential operational risks.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[9] of the Act and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–104. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

[5] *Id.*

[6] *See* CBOE Fees Schedule, Footnote 11.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 C.F.R. 240.19b–4(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–104 and should be submitted on or before December 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27628 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 68175; File No. SR–NSX–2012–17]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule

November 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2012, National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) to implement a monthly FIX Port fee for ETP Holders. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Fee Schedule to add a monthly FIX Port fee for ETP Holders of $100 per FIX Port. ETP Holders who participate in the NSX's Order Delivery mode of interaction are required to maintain at least two (2) FIX Ports (one to receive inbound trade notifications and another to send the Exchange order instructions.) To date, the NSX has not charged ETP Holders for FIX Port connections to the Exchange. NSX recently made sizable investments to upgrade computer equipment during a server relocation, including certain hardware technology and FIX Port enhancements. This fee will help recover some cost associated with the upgrade and help maintain the equipment in the future.

The Exchange notes that the amount the port fee is identical to that charged by the Chicago Stock Exchange, Inc. (''CBSX'').[3] Moreover, following these changes, NSX connectivity costs will still be lower than those assessed for connectivity at other exchanges. For example, (''BATS'') assesses a FIX fee of $400 per month,[4] and the NASDAQ Stock Market LLC assesses a fee of $500 per FIX port per month.[5]

Operative Date and Notice

The Exchange currently intends to implement the proposed FIX Port Fee, which is effective on filing of this proposed rule, operative as of commencement of trading on November 1, 2012. Pursuant to NSX Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*www.nsx.com*). ETP Holders must notify the Exchange by November 15, 2012 to reduce unused or unwanted FIX Ports so as not be charged for them for the month of November 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934[6] (the ''Act''), in general, and Section 6(b)(4) of the Act,[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. The proposed fee assessed FIX Ports is reasonable because the amounts of such fees are significantly lower than those assessed on other exchanges,[8] and because such increases will assist in recovering expenditures recently made to upgrade the NSX connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees will be assessed to all ETP Holders. Requiring ETP Holders who participate in the NSX's Order Delivery mode of interaction to maintain at least two (2) FIX Ports is not unfairly discriminatory because per port fee is significantly lower than those of other exchanges and more than one port is required for ETP Holders to efficiently send and receive trade notifications regarding their posted Order Delivery orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBSX's Fee Schedule at *http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf* (dated September 7, 2012).

[4] *See* BAT's Fee Schedule at *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf* (dated October 1, 2012).

[5] *See* Nasdaq's Fee Schedule at *http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See supra* notes 3, 4, and 5.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [9] and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2012–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2012–17. This file number should be included in the subject line if email is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. eastern time. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSX–2012–17 and should be submitted on or before December 5, 2012.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27598 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68176; File No. SR–C2–2012–037]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, orders for a joint back office (''JBO'') account that clear through the Firm range at the Options Clearing Corporation (''OCC'') (these are the only type of JBO orders that are sent into the Exchange) are sent into the Exchange using the same origin code as Firm orders, and are therefore assessed the same fees as Firm orders. Beginning on November 1, 2012, the Exchange is making available a new origin code for such JBO orders.[3] As such, the Exchange proposes to list JBO as a potential origin for orders on the C2 Fees Schedule in the same categories as the listings for Firm fees. JBO orders will still be assessed the same fee amounts as previously (the same amounts as Firm orders). No substantive changes to any fee amounts are being made.

The proposed change is to take effect on November 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)5 requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* C2 Regulatory Circular C2RG12–047 (October 5, 2012).

[4] 15 U.S.C. 78f(b).

system, and, in general, to protect investors and the public interest. Adding JBO as a potential origin for orders to the appropriate sections on the Fees Schedule will ensure that market participants entering orders for a JBO account to be cleared into the Firm range at the OCC will easily be able to discern the fees that apply to such orders. This will eliminate any potential confusion, thereby removing a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and paragraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2012–037 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–037. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–*2012–037* and should be submitted on or before December 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27599 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68177; File No. SR–BOX–2012–003]

Self-Regulatory Organizations; BOX Options Exchange LLC; Order Approving Proposed Rule Change To Amend the Price Improvement Period

November 7, 2012.

I. Introduction

On July 25, 2012, BOX Options Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 7150, which relates to the Exchange's Price Improvement Period (''PIP''), by modifying the order of execution of quotes and orders that are on the BOX Book prior to the start of a PIP. The proposed rule change was published for comment in the **Federal Register** on August 9, 2012.[4] The Commission received one comment letter on the proposed rule change[5] and a response to the comment letter from the Exchange.[6] This order approves the proposed rule change.

II. Description of the Proposal

Currently, Rule 7150(f) permits a PIP to begin at or better than the National Best Bid or Offer (''NBBO''). Further, Rule 7150(f)(1) provides that, at the commencement of the PIP, all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than (i) the Single-Priced Primary Improvement Order price, or (ii) the PIP Start Price of a Max Improvement Primary Improvement Order, except any proprietary quote or order from the Initiating Participant, will be executed immediately against the customer order designated for the PIP (''PIP Order'') in price/time priority.[7] As a result, if an order is submitted to the PIP and there is sufficient quantity on the BOX Book prior to the PIP Broadcast to execute the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 67592 (August 3, 2012), 77 FR 47681 (''Notice'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Kurt Eckert, Principal, Wolverine Trading, LLC dated August 30, 2012 (''Wolverine Letter'').

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, Exchange, dated October 4, 2012 (''Exchange Response'').

[7] Capitalized terms that are not otherwise defined herein are defined as in the Exchange's Rules.

PIP Order, the PIP does not commence. The Exchange proposes to delete the provision in Rule 7150(f)(1) relating to the execution of quotes and orders on the BOX Book prior to the PIP's commencement and to amend Rules 7150(f)(1)[8] and (f)(4) to specify the priority for executing such quotes and orders at the conclusion of the PIP.

Rule 7150(f)(4) sets forth exceptions to time priority in the execution of the PIP Order. The Rule currently provides that no order for a non-market maker broker-dealer account of an Options Participant may be executed before all Public Customer order(s), whether an Improvement Order, including a Customer PIP Order (''CPO''), or an Unrelated Order,[9] and all non-BOX Options participant broker-dealer order(s) at the same price have been filled. The Exchange proposes to amend Rule 7150(f)(4)(i) to specify further that all quotes and orders on the BOX Book prior to the PIP Broadcast, excluding any proprietary quote or order from the Initiating Participant, will be filled in time priority before any other order at the same price.

The Exchange also proposes to add new Rule 7150(g)(3). New Rule 7150(g)(3) provides that the Primary Improvement Order follows in time priority all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to the (i) Single-Priced Primary Improvement Order price; or (ii) execution price of a Max Improvement Primary Improvement Order that results in the balance of the PIP Order being fully executed, except any proprietary quote or order from the Initiating Participant. Any such proprietary quote or order from the Initiating Participant will not be executed against the PIP Order during or at the conclusion of the PIP.

The Exchange noted that, among the quotes or orders on the BOX Book prior to the PIP Broadcast at the final execution price level, the PIP Order will be matched against the best prevailing quotes or orders on BOX (except any pre-PIP Broadcast proprietary quote or order from the Initiating Participant) in accordance with price/time priority, as set forth in Rule 7130.[10]

Under the proposal, Unrelated Orders submitted to BOX will continue to execute as they do currently under Rules 7150(i) and 7150(j). Accordingly, Unrelated Orders received after a PIP Broadcast will execute in time priority after quotes and orders at the same price that were on the BOX Book prior to the PIP Broadcast.

The Exchange stated that in connection with this proposed rule change, it will provide to the Commission the following monthly data, and corresponding analysis, related to the PIP:[11] (1) The number of orders of 50 contracts or greater entered into the PIP auction; (2) the percentage of all orders of 50 contracts or greater sent to BOX that are entered into the PIP auction; (3) the spread in the option at the time an order of 50 contracts or greater is submitted to the PIP auction; (4) the percentage of PIP trades executed at the NBBO plus $.01, plus $.02, plus $.03, etc.; and (5) the number of orders submitted by Order Flow Providers (''OFPs'') and Market Makers when the spread was at a particular increment (*e.g.,* $.05, $.10, $.15, etc.). Also, relative to item (5) above, for each spread, the Exchange will provide the percentage of contracts in orders of fewer than 50 contracts and for orders of 50 contracts or greater submitted to the PIP that were traded by: (a) the OFP or Market Maker that submitted the order to the PIP; (b) BOX Market Makers assigned to the class; (c) other BOX Participants; (d) Public Customer Orders (including CPOs); (e) Unrelated Orders (orders in standard increments entered during the PIP), and (f) quotes and orders on the BOX Book prior to the PIP Broadcast.

Further, BOX will provide, for the first and third Wednesday of each month, the: (a) Total number of PIP auctions on that date; (b) number of PIP auctions where the order submitted to the PIP was fewer than 50 contracts; (c) number of PIP auctions where the order submitted to the PIP was 50 contracts or greater; (d) number of PIP auctions where the number of Participants (excluding the Initiating Participant) was zero, one, two, three, four, etc. Finally, the Exchange will provide information each month with respect to situations in which the PIP is terminated prematurely or a Market Order, Limit Order, or BOX-Top Order immediately execute with a PIP Order before the PIP's conclusion. The following information will be provided: (1) The number of times that a Market Order, Limit Order, or BOX-Top Order in the same series on the same side of the market as the PIP Order prematurely terminated the PIP, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP that was terminated, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the PIP Order; (2) for the orders addressed in each of items (1)(a) and (1)(b) above, the percentage of PIP premature terminations due to the receipt, during the PIP, of a Market Order, Limit Order, or BOX-Top Order in the same series on the same side of the market as the PIP Order, and the average amount of price improvement provided to the PIP Order where the PIP is prematurely terminated; (3) the number of times that a Market Order, Limit Order, or BOX-Top Order in the same series on the opposite side of the market as the PIP Order immediately executed against the PIP Order, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the PIP, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the PIP Order; (4) for the orders addressed in each of items (3)(a) and (3)(b) above, the percentage of PIP early executions due to the receipt, during the PIP, of a Market Order, Limit Order, or BOX-Top Order in the same series on the opposite side of the market as the PIP Order; and the average amount of price improvement provided to the PIP Order where the PIP Order is immediately executed; and (5) the average amount of price improvement provided to the PIP Order when the PIP runs for 100 milliseconds.

BOX stated that, upon Commission approval of the proposal and at least one week prior to implementation of the proposed rule change, it will issue an Informational Circular to Options Participants informing them of the proposal's implementation date.

III. Discussion and Commission Findings

After careful review of the proposal, the comment letter, and the Exchange Response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the

[8] The Exchange proposes to amend Rule 7150(f)(1) to specify that at the conclusion of the PIP, the PIP Order shall be executed as set forth in paragraphs (f)(3), (f)(4), (g), and (j).

[9] The Exchange proposes a technical change to Rule 7150(f)(4)(i) to correct the current reference to ''unrelated'' by replacing it with the term ''Unrelated Order.''

[10] *See* Notice, *supra* note 4, for examples of how quotes and orders on the BOX Book prior to the PIP Broadcast would be executed at the PIP's conclusion.

[11] *See id.* For orders of less than 50 contracts, the PIP is currently operating on a pilot basis. *See* Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (Order Approving Proposed Rule Change Establishing Trading Rules for Boston Options Exchange facility) and 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No.10–206, In the Matter of the Application of BOX Options Exchange LLC for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission) (''BOX Exchange Application Order''). The pilot program is currently set to expire on July 18, 2013. *See* Securities Exchange Act Release No. 67255 (June 26, 2012), 77 FR 39315 (July 2, 2012).

rules and regulations thereunder applicable to a national securities exchange and, in particular with Section 6(b)(5) [12] of the Act, which requires the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission finds the proposed rule change consistent with Section 6(b)(8) [13] of the Act, which requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[14]

The Commission believes that the proposal is designed to provide additional opportunities for customers to receive price improvement for their PIP Orders. Under the current rule, if an order is submitted to the PIP and there is sufficient quantity on the BOX Book prior to the PIP Broadcast to execute the PIP Order at the PIP Start Price, the PIP Order will execute against the BOX Book (assuming it is at the NBBO), and the PIP will never commence.[15] The Exchange's proposal to modify the handling of such pre-existing quotes and orders on the BOX Book will provide customers with a greater opportunity to receive price improvement above the NBBO on BOX for their PIP Order because those pre-existing quotes and orders on the BOX Book no longer will execute against the PIP Order before the PIP can begin. Thus, the proposal may benefit customers who submit PIP Orders priced at the NBBO by allowing their orders to be exposed to competition in the PIP. The PIP Order will continue to be guaranteed an execution price of at least the NBBO and, as a result of the Exchange's proposal, will be given an opportunity for execution at a price better than the NBBO. At the same time, all quotes and orders on the BOX Book prior to the PIP Broadcast at the PIP Start Price (excluding any proprietary quote or order from the Initiating Participant) will be filled in time priority before any other order at the same price at the conclusion of the PIP, assuming they have not already been executed.

The Commission received one comment letter from a BOX Options Participant opposing the proposed rule change.[16] According to the commenter, the current requirement that the top of the BOX Book be ''swept'' prior to the PIP's commencement incentivizes market participants to quote aggressively on BOX and allows retail orders to interact with quotes on the Exchange. In addition, the commenter noted that market participants could initiate a PIP without having a quote either at the NBBO on any exchange or at the BBO on BOX.[17] Therefore, according to the commenter, the proposal diminishes the incentive for robust quoting on BOX or the resting of public customer limit orders on the BOX Book.[18] The commenter suggested that the proposal be amended to require that BOX must sweep the top of the BOX Book if the PIP starts at the BOX BBO and that the Initiating Participant must be quoting at the BOX BBO.[19]

The Exchange responded that, in its view, a customer's entire PIP Order should have the opportunity for competing market participants to provide price improvement to that customer order.[20] The Exchange stated that that if ''competing participants step up to provide a better price for the customer order, it is appropriate, and consistent with the federal securities laws, for that customer to receive an execution at the best price available (price improvement through the PIP auction) rather than the market maker quote on the book that is no longer the best bid or offer.'' [21]

The Commission recognizes the concern regarding the impact of the proposed rule change on the overall incentives for market participants to rest liquidity on the BOX Book. However, as discussed above, the Commission also recognizes the potential benefit from the proposed rule change with respect to customer PIP Orders priced at the NBBO by providing customers with a greater opportunity to receive price improvement on BOX for their PIP Orders by allowing those orders to be exposed to competition in the PIP, before interacting with pre-existing quotes and orders on the BOX Book at the PIP Start Price. In the Commission's view, the Exchange's proposal is reasonably designed to balance the potential for customers to receive price improvement in the PIP, rather than to have their orders immediately executed against a pre-existing quote on the BOX Book at the NBBO, with the potential to impact Market Makers' or other market participants' incentives to quote aggressively because they no longer will have the assurance that their quotes at the NBBO will execute against the PIP Order before the PIP begins. Quotes and orders that are on the BOX Book prior to the PIP Broadcast will continue to be able to interact with non-PIP order flow during the auction period. In addition, under the proposal, such quotes and orders will have priority to interact with any PIP order flow at the end of the auction period, unless the entire PIP order is price improved. Moreover, Market Makers or other market participants that wish to interact with the PIP Order can do so by submitting their own Improvement Orders into the PIP auction. For these reasons, the Commission believes that the proposal is consistent with the Act.

The commenter also remarked that the proposal is defective because it would allow a PIP auction to begin at the NBBO rather than requiring at least a penny of price improvement over the BOX BBO.[22] The commenter suggested that the proposal be amended so that the PIP start price would be at least a penny better than the BOX BBO.[23] The Commission notes, however, that instant proposal relates solely to the priority and allocation of quotes and orders that are on the BOX Book prior to a PIP's commencement. The Exchange has not proposed to revise the start price of the PIP and thus this issue is not before the Commission.[24] Further, as discussed above, the Commission believes that the proposed rule change, as submitted, is consistent with the Act.

In addition, the commenter stated its belief that the proposal has the potential to harm retail investors.[25] According to the commenter, the proposal serves ''to remove real orders from interaction with

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] If the quotes and orders on the BOX Book at the PIP Start Price are smaller in size than the PIP Order, then the portion of the PIP Order that does not execute against such pre-existing quotes and orders on the BOX Book will be submitted to the PIP auction.

[16] *See* Wolverine Letter, *supra* note 5.

[17] With respect to the comment that market participants could initiate a PIP without having a quote either at the NBBO on any exchange or at the BBO on BOX, the Commission notes that this feature is currently part of the PIP. The Exchange has not proposed to revise this aspect of the PIP, and thus this issue is not before the Commission.

[18] *See* Wolverine Letter, *supra* note 5, at 1–2.

[19] *See* Wolverine Letter, *supra* note 5, at 2.

[20] *See* Exchange Response, *supra* note 6, at 1.

[21] *See* Exchange Response, *supra* note 6, at 2.

[22] *See* Wolverine Letter, *supra* note 5, at 2.

[23] *Id.*

[24] Under Rule 7150(f), the PIP start price must be equal to or better than the NBBO at the time of commencement of the PIP. Accordingly, if the BOX BBO does not equal the NBBO, then the PIP must start at a price that is better than the BOX BBO. *See* Securities Exchange Act Release No. 59654 (March 30, 2009), 74 FR 15551 (April 6, 2009).

[25] *See* Wolverine Letter, *supra* note 5, at 2.

lit markets at exchanges'' and reduces the NBBO to ''little more than a reference price that is not the best available for retail investors.'' [26] The commenter further noted that, to the extent price competition decreases on an exchange, the NBBO increasingly loses value as a reference price.[27] The commenter stated its view that the proposal is harmful to market efficiency in that it ''turns the exchange into an internalization facilitator rather than a bona fide market with multiple participants competing to offer the best prices to customers.'' [28]

The Exchange responded that the proposal promotes transparent competition to ensure that customer orders receive the best price possible.[29] The Exchange noted that the PIP Broadcast is sent to any Options Participant that wishes to receive it. According to the Exchange, the PIP permits Market Makers to submit competing orders into the PIP auction for their own account, and all non-market maker Options Participants also may submit competing orders into the PIP auction for their own account or for their customer accounts. The Exchange also responded that Options Participants are actively competing for customer orders in the PIP.[30] Moreover, the Exchange noted that its Market Makers are the Options Participants most likely to compete for execution against customer orders in the PIP, even though their quotes that are on the BOX Book at the NBBO currently execute prior to a PIP's start.[31] Any Options Participant (except for the Initiating Participant), including Options Participants that have placed quotes and orders on the BOX Book, may choose to submit Improvement Orders into the PIP and compete for the PIP Order.[32]

The Commission believes that these features of the PIP are designed to provide the opportunity for a competitive auction, which benefits customers by giving them the chance for price improvement better than the NBBO and thus the Exchange's proposal should not result in a harmful impact on market efficiency. As discussed above, the proposal is intended to provide increased opportunities for price improvement of customer PIP Orders priced at the NBBO by permitting a PIP to go forward without those quotes and orders on the BOX Book at the PIP start price being executed against the PIP Order before the PIP auction commences. Quotes and orders on the BOX Book prior to a PIP Broadcast will retain their priority at the same price at the conclusion of the PIP (assuming they have not already been executed on the BOX Book). However, as noted above, the Exchange has committed to provide the Commission with monthly data and corresponding analysis related to the PIP, including statistics with respect to the execution of quotes and orders on the BOX Book prior to the start of the PIP.[33] This data will assist the Commission and the Exchange in monitoring the impact of the proposed rule change.

IV. Section 11(a) of the Act

Section 11(a)(1) of the Act [34] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts''), unless an exception applies. The Exchange represents that the proposed rule change is consistent with Section 11(a) of the Act. Specifically, the Exchange believes that the PIP is generally consistent with Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder because Options Participants that are not Market Makers must yield priority in the PIP to all non-member orders (*i.e.,* to all Public Customer Orders and non-BOX Participant broker-dealer orders) at the same price.[35] In addition, the Exchange believes that the proposed change to execute, against the PIP Order and at the end of a PIP auction, those quotes and orders on the BOX Book prior to the PIP Broadcast (if at the PIP Start Price) satisfies the conditions of Rule 11a2–2(T) under the Act. For the reasons set forth below, the Commission believes that the proposed rule change is consistent with the requirements of Section 11(a) of the Act and the rules thereunder.

A. Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) Thereunder

Section 11(a)(1)(G) of the Act provides an exception from the general prohibition set forth in Section 11(a)(1) for any transaction for a member's own account, provided that: (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities; and (ii) the transaction is effected in compliance with the rules of the Commission, which, at a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange.[36] In addition, Rule 11a1–1(T) under the Act specifies that a transaction effected on a national securities exchange for the account of a member which meets the requirements of Section 11(a)(1)(G)(i) of the Act is deemed, in accordance with the requirements of Section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of non-members or persons associated with non-members of the exchange, if such transaction is effected in compliance with certain requirements.[37]

With respect to the PIP, the rules of the Exchange currently prohibit any orders for the accounts of non-Marker Maker Options Participants from being executed prior to the execution of Public Customer Orders, whether an Improvement Order, including a Customer PIP Order, or Unrelated Order, and non-BOX Participant broker-

[26] *Id.*

[27] *Id.*

[28] *See* Wolverine Letter, *supra* note 5, at 2.

[29] *See* Exchange Response, *supra* note 6, at 2.

[30] According to the Exchange, for the eight-plus years that the PIP has been in effect, approximately 70% of PIP auctions have included competition for execution (*i.e.,* at least one other Options Participant has competed with the Initiating Participant for execution of a customer order). The Exchange stated that almost 50% of all PIP auctions included three or more Participants competing for the PIP execution. *Id.*

[31] *Id.*

[32] *Id.*

[33] *See supra* note 11.

[34] 15 U.S.C. 78k(a)(1).

[35] *See* Notice, *supra* note 4 at n.12.

[36] See 15 U.S.C. 78k(a)(1)(G).

[37] Rule 11a1–1(T)(a)(1)–(3) provides that each of the following requirements must be met: (1) A member must disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any member through whom that bid or offer is communicated must disclose to others participating in effecting the order that it is for the account of a member; (2) immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange must clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member; and (3) notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member must grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered. *See* 17 CFR 240.11a1–1(T)(a)(1)–(3).

dealer orders at the same price.[38] The current proposed rule change revises the treatment of quotes and orders on the BOX Book prior to the PIP Broadcast, which orders will now be executed against the PIP Order at the end of the PIP (if at the same price). However, the execution of these quotes and orders against the PIP Order qualifies for a separate exception to the Section 11(a) restrictions.[39] Thus, because current Exchange rules require Options Participants that are not Market Makers[40] to yield priority in the PIP to all non-member orders, the Commission believes that the proposal with respect to transactions effected through the PIP, other than for quotes and orders on the BOX Book prior to the PIP Broadcast, is consistent with the requirements in Section 11(a) of the Act and Rule 11a1–1(T) thereunder.[41] The Commission reminds exchanges and their members, however, that, in addition to yielding priority to non-member orders at the same price, members must also meet the other requirements under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder (or satisfy the requirements of another exception) to effect transactions for their own accounts.

B. ''Effect versus Execute'' and Rule 11a2–2(T) under the Act

Rule 11a2–2(T) under the Act,[42] known as the ''effect versus execute'' rule, provides exchange members with another exception from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (1) May not be affiliated with the executing member; (2) must transmit the order from off the exchange floor; (3) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [43] and (4) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that the execution of quotes and orders that are on the BOX Book prior to a PIP Broadcast against a PIP Order will satisfy the requirements of Rule 11a2–2(T).[44] For the reasons set forth below, the Commission believes that, under the proposed rule change, such executions will satisfy the conditions of Rule 11a2–2(T).[45]

Rule 11a2–2(T)'s first condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Trading Host, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages over non-members in handling their orders after transmitting them to the Exchange.[46] The Exchange represents that the design of the BOX Book, including the mechanism that executes quotes and orders resting on the Book prior to a PIP against the PIP order at the conclusion of a PIP auction, ensures that broker-dealers do not have any special or unique trading advantages in handling their orders after transmission. Accordingly, the Exchange believes that a member effecting a transaction through the BOX Book, even where the quote or order on the Book prior to a PIP executes against the PIP Order, satisfies the requirement for execution through an unaffiliated member.

According to the Exchange, the design of BOX ensures that no Options Participant would enjoy any special control over the timing of execution or special order handling advantages after order transmission to the BOX Book. All orders on the BOX Book are centrally processed and executed automatically by BOX. Orders sent to BOX would be transmitted from remote terminals directly to the system by electronic means. Once an order is submitted to the BOX Book, the order would be executed against another order based on the established matching algorithms for the BOX Book. In addition, as proposed, those quotes and orders on the BOX Book prior to a PIP may trade with the PIP Order, or would execute when orders or quotations on BOX match one another based on price/time priority. The execution would not depend on the Options Participant but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the BOX Book, or if a PIP is initiated and what responses are received in response to the PIP, and where the order is ranked based on the priority ranking algorithm. At no time following the submission of an order to the BOX Book would an Options Participant be able to acquire control or influence over the result or timing of order execution, including whether it is executed against an order in the PIP. Accordingly, Options Participants could not control or influence the result or timing of orders submitted to the BOX Book, even if such an order were to match with the PIP Order. Based on the Exchange's representations, the Commission believes that the proposal satisfies this requirement of Rule 11a2–2(T).

Second, Rule 11a2–2(T) requires orders for covered accounts be transmitted from off the exchange floor. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[47] The Exchange

[38] *See* BOX Rules 7150(f)(4) and 7150(g)(3)(i).

[39] *See infra* Section IV. B.

[40] Section 11(a)(1)(A) of the Act provides an additional exception to the general prohibition in Section 11(a) on an exchange member effecting transactions for its own account if such member is a dealer acting in the capacity of a market maker. *See* 15 U.S.C. 78k(a)(1)(A).

[41] The Commission has previously found that transactions effected through the PIP are consistent with the requirements in Section 11(a) of the Act and Rule 11a1–1(T) thereunder because Options Participants that are not Market Makers are required to yield priority in the PIP to all non-member orders, (*i.e.,* to all Public Customer Orders and non-Options Participant broker-dealer orders) at the same price. *See* BOX Exchange Application Order, *supra* note 11. The Commission believes that transactions effected through the PIP, as amended by the proposed rule change, remain consistent with the requirements Section 11(a) of the Act and Rule 11a1–1(T) thereunder.

[42] 17 CFR 240.11a2–2(T).

[43] The member may, however, participate in clearing and settling the transaction. *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[44] For a more detailed discussion, see the description of the proposed rule change in the Notice, *supra* note 4 and *supra* Section II.

[45] *See* BOX Exchange Application Order, *supra* note 11.

[46] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into each system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the American Stock Exchange (''Amex'') Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange (''Phlx'') Automated Communications and Execution System (''1979 Release'')).

[47] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS

Continued

states that orders sent to the BOX Book, regardless of where it executes within the BOX system, including the Book or the PIP, would be transmitted from remote terminals directly to BOX by electronic means. OFPs and Market Makers would only submit orders and quotes to BOX from electronic systems from remote locations, separate from BOX. The Exchange further represents that there are no other Options Participants that would be able to submit orders to BOX other than OFPs or Market Makers. Accordingly, the Commission believes that Options Participants' orders electronically received by BOX satisfy the off-floor transmission requirement for the purposes of the Rule.

Third, Rule 11a2–2(T) requires that the member not participate in the execution of its order once it has been transmitted to the member performing the execution. The Exchange represents that, at no time following the submission of an order to the BOX Book, would an Options Participant be able to acquire control or influence over the result or timing of order execution, even if its order on the BOX Book may execute with a PIP Order.[48] According to the Exchange, upon submission to BOX, an order would be executed against another order on the BOX Book or against the PIP Order based on an established matching algorithm. The execution would not depend on the Options Participant, but rather upon what other orders are entered into BOX at or around the same time as the subject order, what orders are on the BOX Book, whether a PIP is initiated and what responses are received in response to the PIP, and where the order is ranked based on the priority ranking algorithm. As such, the Commission believes that the non-participation requirement is met when orders are executed automatically on the BOX Book, including if they execute against a PIP order.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[49] The Exchange has represented that, as a prerequisite for BOX usage, if an Options Participant is to rely on Rule 11a2–2(T) for a covered account transaction, the Options Participant must comply with the limitations on compensation set forth in Rule 11a2–2(T).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–BOX–2012–003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27600 Filed 11–13–12; 8:45 am]

BILLING CODE 8011–01–P

options trading); 59154 (December 28, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility). *See also* 1978 Release and 1979 Release.

[48] The member may only cancel or modify the order, or modify the instructions for executing the order, but only from off the Exchange floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release (stating that the ''non-participation requirement does not prevent initiating members from canceling of modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[49] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated person thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13369 and #13370]

Connecticut Disaster #CT–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4087–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 and continuing.

DATES: *Effective Date:* 10/30/2012.

Physical Loan Application Deadline Date: 12/31/2012.

Economic Injury (*EIDL*) *Loan Application Deadline Date:* 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/30/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Fairfield, Middlesex, New Haven, New London and the Mashantucket Pequot Tribal Nation and Mohegan Tribal Nation located within New London County.

Contiguous Counties (Economic Injury Loans Only):

Connecticut: Hartford, Litchfield, Tolland, Windham.

New York: Dutchess, Putnam, Westchester.

Rhode Island: Kent, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133698 and for economic injury is 133700.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27649 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster Number NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 and continuing.

Effective Date: 11/05/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Jersey, dated 10/30/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Morris, Passaic, Salem, Sussex, Warren.

Contiguous Counties: (Economic Injury Loans Only):

Delaware: New Castle.

New York: Orange.

Pennsylvania: Bucks, Delaware, Monroe, Northampton, Philadelphia, Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27653 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13374 and # 13375]

New York Disaster # NY–00131

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4085–DR), dated 11/03/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 and continuing.

Effective Date: 11/03/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/03/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133748 and for economic injury is 133758.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27652 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13378 and #13379]

Rhode Island Disaster #RI–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Rhode Island (FEMA–4089–DR), dated 11/03/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 10/31/2012.

Effective Date: 11/03/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/03/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bristol, Newport, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133788 and for economic injury is 133798.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2012–27651 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13365 and #13366]

New York Disaster #NY–00130

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of NEW YORK (FEMA–4085–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 and continuing.

Effective Date: 10/30/2012.

Physical Loan Application Deadline Date: 12/31/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/30/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk.

Contiguous Counties (Economic Injury Loans Only):

New York: Westchester.

New Jersey: Bergen, Hudson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133658 and for economic injury is 133660.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27650 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13376 and #13377]

Utah Disaster #UT–00021

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of UTAH (FEMA–4088–DR), dated 11/03/2012.

Incident: Severe Storm and Flooding.

Incident Period: 09/11/2012.

Effective Date: 11/03/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/03/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13376B and for economic injury is 13377B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27654 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster #NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 and continuing.

Effective Date: 10/30/2012.

Physical Loan Application Deadline Date: 12/31/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/30/2012, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Atlantic; Cape May; Essex; Hudson; Middlesex; Monmouth; Ocean; Union.

Contiguous Counties (Economic Injury Loans Only):

New Jersey: Bergen; Burlington; Camden; Cumberland; Gloucester; Mercer; Morris; Passaic; Somerset.

New York: New York.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	3.375.
Homeowners Without Credit Available Elsewhere:	1.688.
Businesses With Credit Available Elsewhere:	6.000.
Businesses Without Credit Available Elsewhere:	4.000.
Non-Profit Organizations With Credit Available Elsewhere:	3.125.
Non-Profit Organizations Without Credit Available Elsewhere:	3.000.
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000.
Non-Profit Organizations Without Credit Available Elsewhere	3.000.

The number assigned to this disaster for physical damage is 133678 and for economic injury is 133680.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27657 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster Number NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), Dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 And Continuing.

Effective Date: 11/01/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, Tx 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New Jersey, dated 10/30/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Bergen, Somerset.

Contiguous Counties: (Economic Injury Loans Only):

New Jersey: Hunterdon.

New York: Bronx, Rockland, Westchester.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27656 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13380 and #13381]

New Jersey Disaster #NJ–00034

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4086–DR), dated 11/05/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 and continuing.

Effective Date: 11/05/2012.

Physical Loan Application Deadline Date: 01/04/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/05/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Atlantic, Bergen, Burlington, Camden, Cape May, Cumberland, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Sussex, Union, Warren.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125.
Non-Profit Organizations Without Credit Available Elsewhere	3.000.
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000.

The number assigned to this disaster for physical damage is 133808 and for economic injury is 133818.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–27655 Filed 11–13–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 8087]

60-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 14, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PPTFormsOfficer@state.gov.*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.
- *Fax:* (202) 663–2410.
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card.
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/PMO/PC).
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 553,000 respondents per year.
- *Estimated Number of Responses:* 553,000 responses per year.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 46,083 hours per year.
- *Frequency:* On occasion.
- *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The Secretary of State is authorized to issue U.S. passports under 22 U.S.C. 211a *et seq.,* 8 U.S.C. 1104, and Executive Order 11295 (August 5, 1966). Individuals whose valid or potentially valid U.S. passports were lost or stolen must make a report of the lost or stolen passport to the Department of State before they receive a new passport so that the lost or stolen passport can be invalidated. (22 CFR parts 50 and 51) The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS–64 collects information identifying the person who held the lost or stolen passport and describing the circumstances under which the passport was lost or stolen. We use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport as required by these authorities.

Methodology: This form is used in conjunction with a DS–11, ''Application for a U.S. Passport'', or submitted separately to report loss or theft of a U.S. passport. Passport Services collects the information when a U.S. citizen or non-citizen national applies for a new U.S. passport and has been issued a previous, still valid U.S. passport that has been lost or stolen, or when a passport holder independently reports it lost or stolen. Passport applicants can either download the form from the internet or obtain one at any Passport Agency or Acceptance Facility.

Dated: November 6, 2012.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–27676 Filed 11–13–12; 8:45 am]

BILLING CODE 4710–06–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

Meeting No. 12–04

November 15, 2012

The TVA Board of Directors will hold a public meeting on November 15, 2012, in the Northeast Alabama Community College Lyceum Auditorium, Lowell Barron Highway at Alabama Highway 35, Rainsville, Alabama. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (CT). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (CT). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

STATUS: Open.

Agenda

Chairman's Welcome.

Old Business

Approval of minutes of August 16, 2012, Board Meeting.

New Business

1. Resolution Honoring Tom Kilgore

2. Report from President and CEO
3. Report of the Finance, Rates, and Portfolio Committee
   A. Financial Performance Update
   B. Section 13 Tax Equivalent Payments
   C. Contract with GE Consortium for Water Treatment Services
   D. Supplemental Rate for Residential Appurtenances
   E. Industrial Customer Contract Amendment
4. Report of the People and Performance Committee
   A. Performance and Compensation
5. Report of the Audit, Risk, and Regulation Committee
   A. Assistant Corporate Secretary Appointment
6. Report of the Nuclear Oversight Committee
7. Report of the External Relations Committee
   A. Muscle Shoals Development Project
   B. Regional Resource Stewardship Council Appointments
8. Recognition of Departing Directors
9. Information Items
   A. Retention of executive search consultant to identify candidates for Chief Executive Officer position
   B. Appointment of new Chief Executive Officer

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 8, 2012.

Ralph E. Rodgers,

General Counsel and Secretary.

[FR Doc. 2012–27821 Filed 11–9–12; 4:15 pm]

BILLING CODE 8120–01–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2012–0183]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments; correction.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 6, 2012 (75 FR 46789). No comments were received.

Correction: The notice in the August 6, 2012 **Federal Register** [77 FR 46789] requested comments on the Agency's Renewal of a Previously Approved Information Collection: Disclosure of Change-of-Gauge Services. The approval for the Information Collection, abstracted below, expired on August 31, 2012 during the 60-day comment period. Therefore, the Agency is now requesting Reinstatement of a Previously Approved Collection: Disclosure of Change-of-Gauge Services.

DATES: Comments must be submitted on or before December 14, 2012.

ADDRESSES: Send written comments on any or all of the following proposed activities, including the burden estimate and suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Department of Transportation, Office of the Secretary, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Snoden, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4834.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0538.

Title: Disclosure of Code Sharing Arrangements and Long-Term Wet Leases.

Type of Review: Reinstatement of a previously approved information collection.

Abstract: Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates.

The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or deceptive practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department requires as a matter of policy that customers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89–1–31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

Respondents: All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel agents doing business in the United States, and the traveling public.

Number of Respondents: 16,000, *excluding* travelers.

Frequency: At 15 seconds per call and an average of 1.5 calls per trip, a total of 22.5 seconds per respondent or traveler, for the approximately 33% of estimated change-of-gauge itineraries that involve personal contact.

Total Annual Burden: Annual reporting burden for this data collection is estimated at 76,313 hours for all travel agents and airline ticket agents, based on 15 seconds per phone call and an average of 1.5 phone calls per trip, for the approximately 33% of estimated change-of-gauge itineraries that involve personal contact. Most of this data

collection (third party notification) is accomplished through highly automated computerized systems.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on November 7, 2012.

Claire Barrett,

Chief Privacy & Information Asset Officer, U.S. Department of Transportation.

[FR Doc. 2012–27618 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that the FAA's Air Traffic Procedures Advisory Committee (ATPAC) two year charter has been coordinated and signed by the FAA Administrator. The ATPAC charter is valid for two years and provides a venue to review air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: October 29, 2012 valid until October 29, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Norek, ATPAC Executive Director, 800 Independence Avenue SW., Washington, DC 20591.

Issued in Washington, DC, on October 25, 2012.

Gary A. Norek,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2012–27669 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact/ Record of Decision (FONSI/ROD) for the Aberdeen Regional Airport in Aberdeen, South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of a Final EA and FONSI/ROD.

SUMMARY: The FAA has issued the final EA final Environmental Assessment (EA) for the Aberdeen Regional Airport Updates and FONSI/ROD for the proposed decoupling of runways 13/31 and 17/35 and fill on airport wetlands and associated actions for Aberdeen Regional Airport. The EA was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Orders 1050.1E, ''Environmental Impacts: Policies and Procedures'' and FAA Order 5050.4B, ''NEPA Implementing Instructions for Airport Actions''.

Point of Contact: Mr. Al Fenedick, Environmental Protection Specialist, FAA Regional Office, Suite 315, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone number 847–294–7522.

SUPPLEMENTARY INFORMATION: The FAA is issuing a final EA for the Aberdeen Regional Airport Updates and FONSVROD that evaluated the potential environmental impacts associated with the proposed decoupling of Runways13/31 and 17/35 and fill on airport wetlands actions at Aberdeen Regional Airport located in Aberdeen, South Dakota. Based on the analysis contained in the final EA, the FAA has determined the selected alternative has no associated significant impacts to resources identified in accordance with FAA Order I050.IE, Environmental Impacts: Policies and Procedures and FAA Order 5054.4B, National Environmental Policy Act Implementing Instructions for Airport Actions. Therefore, no environmental impact statement will be prepared. The proposed decoupling of runways 13/31 and 17/35 and fill on airport wetlands project is needed to enhance the utility and safety of the Aberdeen Regional Airport for current and projected levels of aviation by the design aircraft family.

Four alternatives were studied for meeting the purpose and need. Three of the four alternatives were reviewed, analyzed, discarded due to the degree of environmental impacts and not meeting purpose and need. A detailed discussion is in the V. Alternatives Discarded Section of the FONSVROD. The selected alternative is one of four considered in the final EA. The selected alternative consists of addressing the identified needs: Incompatible land use, non-standard runway configuration, and hazardous wildlife habitat.

The selected alternative includes the: (I.) Unconditional approval of the Airport Layout Plan (ALP) for the development listed in the EA and the decision document. (2.) Issue final airspace determinations for the development listed on the ALP. (3.) Eligibility for Federal grants-in-aid funds for eligible items. (4.) Approval of design and use of air traffic procedures needed to implement the proposed action. (5.) FAA Finding of ''No Historic Properties Affected'' for the Proposed Action. (6.) FAA findings of ''may affect, not likely to adversely affect'' for the Topeka shiner and Whooping Crane endangered species. (7.) FAA Finding of ''No Impact'' to floodplains. (8.) Wetland finding that there is no practicable alternatives to such construction and the proposed action includes all practicable measure to minimize harm to wetlands. (9.) Appropriate permits and mitigation will be needed before disbursing Federal funds. These documents will be available for public review during normal business hours at:

Federal Aviation Administration Bismarck ADO, 2301 University Drive, Bldg. 23B, Bismarck, North Dakota 58504.

Aberdeen Regional Airport, Manager's Office, Terminal Building, E Highway 12, Aberdeen, SD 57401.

Aberdeen City Hall, Engineering Department, 123 S. Lincoln St., Aberdeen, SD 57401.

Alexander Mitchell Library, 519 S. Kline St., Aberdeen, SD 57401.

Issued in Bismarck, North Dakota, October 17, 2012.

Andrew J. Peck,

Acting Manager, Manager, Bismarck Airport District Office FAA, Great Lakes Region.

[FR Doc. 2012–27670 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; J. Douglas Bake Memorial Airport (OCQ) Oconto, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to authorize the release of 0.32 acres of airport property (Parcel No. 18) at the J. Douglas Bake Memorial Airport, Oconto, WI.

Parcel No. 18 is located outside of the airport fence along the west edge of the airport and contains a part of a road used to access a land-locked parcel of private property located adjacent to the airport. Using the piece of airport property as an uncontrolled access road has resulted in a non-aeronautical use of

airport property and a compliance issue for the airport. In addition, the uncontrolled access raises liability concerns for the airport. The land release would bring the airport into compliance with grant assurances and assure compatible land use. It would also remove the liability issue related to the unauthorized use of the access road.

A categorical exclusion for this land release action was prepared by Wisconsin Dept. of Transportation-Bureau of Aeronautics and issued on June 22, 2011.

The aforementioned land is not needed for aeronautical use. The parcel is depicted on the Airport Layout Plan and Exhibit ''A'' property map dated July 12, 2011. There are no impacts to the airport by allowing the airport to dispose of this parcel.

The subject parcel was originally acquired on September 10, 2002, as part of Airport Improvement Program grant No. 04 and is described in the warranty deed recorded in Volume 933 pages 480–481, Oconto County, Wisconsin. The value of the parcel is $600.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before December 14, 2012.

ADDRESSES: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635; FAX Number (612) 253–4611; email address *Daniel.J.Millenacker@FAA.GOV*. Documents reflecting this FAA action may be reviewed at the following locations: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706; or Wisconsin Department of Transportation, 4802 Sheboygan Ave., Room 701, Madison, WI 53707.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 253–4635; FAX Number (612)253–4611; email address *Daniel.J.Millenacker@FAA.GOV*.

SUPPLEMENTARY INFORMATION: Following is a legal description of the subject airport property to be released at the J. Douglas Bake Memorial Airport in Oconto, Wisconsin:

Part of Government Lot 3, Section 26, Township 28 North, Range 21 East, Town of Oconto, Oconto County, Wisconsin.

Commencing at the North Quarter corner of Section 26; Thence South 87 degrees 35 minutes 26 seconds West, along the north line of section 26, a distance of 1333.25 feet; Thence South 00 degrees 22 minutes 17 seconds West along the west line of Government Lot 3, distance of 685.43 feet to the Point of Beginning. Thence continuing South 00 degrees 22 minutes 17 seconds West a distance of 504.34 feet; Thence South 89 degrees 36 minutes 17 seconds East a distance of 55.89 feet; Thence North 05 degrees 57 minutes 09 seconds West a distance of 507.45 feet to the Point of Beginning. Said parcel containing 0.32 Acres/14,094.3 Square Feet of land more or less.

Said parcel subject to all easements, restrictions, and reservations of record.

Issued in Minneapolis, MN, on October 15, 2012.

Steven J. Obenauer,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2012–27662 Filed 11–13–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 30186]

Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, Montana: Update to the Notice of Intent to Prepare an Environmental Impact Statement (EIS)

The Surface Transportation Board's Office of Environmental Analysis (OEA) issued a Notice of Intent (NOI) to prepare an EIS, a Draft Scope of Study, and a notice of scoping meetings in the above-captioned proceeding on October 22, 2012 and published it in the **Federal Register** on the same day. OEA is issuing this Notice because additional meetings will be held in Lame Deer, Montana, on Friday, November 16, 2012.

The additional meetings will be held at the following location on Friday, November 16, 2012 between 2–4 p.m. and 6–8 p.m.:

Chief Little Wolf Capital Building, Northern Cheyenne Tribal Chambers, 600 South Main Cheyenne Avenue, Lame Deer, MT 59043.

Please include these additional meetings on your copies accordingly. The NOI is available on the Board's Web site at *www.stb.dot.gov.*

By the Board.

Victoria Rutson,

Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–27760 Filed 11–13–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 34554 (Sub-No. 17)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board.

ACTION: Partial revocation of exemption.

SUMMARY: Under 49 U.S.C. § 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 34554 (Sub-No. 16) [1] to permit the trackage rights to expire on or about December 31, 2012, in accordance with the agreement of the parties,[2] subject to the employee

[1] In that docket, on August 16, 2012, Union Pacific Railroad Company (UP) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF Railway Company (BNSF) to extend to December 31, 2012, the expiration date of the local trackage rights granted to Union Pacific Railroad Company (UP) over BNSF's line of railroad between BNSF mileposts 579.3 near Mill Creek, Okla., and 631.1 near Joe Junction, Tex., a distance of approximately 51 miles. UP submits that, while the trackage rights are only temporary rights, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). *See Union Pac. R.R.—Temporary Trackage Rights Exemption—BNSF Ry.*, FD 34554 (Sub-No. 16) (STB served Aug. 31, 2012).

[2] The trackage rights were originally granted in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* FD 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed several notices of exemption based on their agreements to extend expiration dates of the same trackage rights. *See* FD 34554 (Sub-No. 2) (STB served Feb. 11, 2005); FD 34554 (Sub-No. 4) (STB served Mar. 3, 2006); FD 34554 (Sub-No. 6) (STB served Jan. 12, 2007); FD 34554 (Sub-No. 8) (STB served Jan. 4, 2008); FD 34554 (Sub-No. 10) (STB served Jan. 8, 2009); FD 34554 (Sub-No. 12) (STB served Dec. 31, 2009); and FD 34554 (Sub-No. 14) (STB served Feb. 11, 2011). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. *See* FD 34554 (Sub-No. 1) (STB served Nov. 24, 2004);

Continued

protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

FD 34554 (Sub-No. 3) (STB served Mar. 25, 2005); FD 34554 (Sub-No. 5) (STB served Mar. 23, 2006); FD 34554 (Sub-No. 7) (STB served Mar. 13, 2007); FD 34554 (Sub-No. 9) (STB served Mar. 20, 2008); FD 34554 (Sub-No. 11) (STB served Mar. 11, 2009); FD 34554 (Sub-No. 13) (STB served Mar. 15, 2010); and FD 34554 (Sub-No. 15) (STB served Apr. 15, 2011). At the time of the extension authorized in Docket No. FD 34554 (Sub-No. 14), the parties anticipated that the authority to allow the rights to expire would be exercised by December 18, 2011. On August 16, 2012, in Docket No. FD 34554 (Sub-No. 16), UP filed its most recent notice of exemption seeking Board authority for temporary trackage rights covering the parties' latest agreement—September 15, 2012 to December 31, 2012. In Docket No. FD 34554 (Sub-No. 17), UP filed a petition to partially revoke the class exemption to permit expiration of those trackage rights, which we are addressing here.

DATES: This decision is effective on December 14, 2012. Petitions to stay must be filed by November 26, 2012. Petitions for reconsideration must be filed by December 4, 2012.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 34554 (Sub-No. 17) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on UP's representative: Elisa B. Davies, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Marc Lerner (202) 245–0390. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Decided: November 8, 2012.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–27638 Filed 11–13–12; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 3, 22 et al.
Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 22, 30, and 140

RIN 3038–AD88

Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to adopt new regulations and amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (''FCMs''). The proposal also addresses certain related issues concerning derivatives clearing organizations (''DCOs'') and chief compliance officers (''CCOs''). The proposed rules will afford greater assurances to market participants that: customer segregated funds and secured amounts are protected; customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; FCMs are monitoring and managing risks in a robust manner; the capital and liquidity of FCMs are strengthened to safeguard their continued operations; and the auditing and examination programs of the Commission and the self-regulatory organizations (''SROs'') are monitoring the activities of FCMs in a prudent and thorough manner.

DATES: Comments must be received on or before January 14, 2013.

ADDRESSES: You may submit comments, identified by RIN 3038–AD88, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.*

Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: *Division of Swap Dealer and Intermediary Oversight:* Gary Barnett, Director, 202–418–5977, *gbarnett@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Frank Fisanich, Chief Counsel, 202–418–5949, *ffisanich@cftc.gov;* or Ward P. Griffin, Associate Chief Counsel, 202–418–5425, *wgriffin@cftc.gov,* Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, or Kevin Piccoli, Deputy Director, 646–746–9834, *kpiccoli@cftc.gov,* 140 Broadway, 19th Floor, New York, NY 10005.

Division of Clearing and Risk: Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov,* Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

Office of the Chief Economist: Camden Nunery, Economist, *cnunery@cftc.gov,* 202–418–5723, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Statutory and Current Regulatory Structure

The protection of customers—and the safeguarding of money, securities or other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework. Section 4d(a)(2)[2] of the Commodity Exchange Act (''Act'')[3] requires each FCM to segregate from its own assets all money, securities and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets.[4] Section 4d(a)(2) further requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by a futures customer to margin or extend credit to any person other than the futures customer that deposited the funds. Section 4d(f) of the Act, which was added by section 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[5] requires each FCM to segregate from its own assets all money, securities and other property deposited by Cleared Swaps Customers to margin transactions in Cleared Swaps.[6]

The Commission has adopted §§ 1.20 through 1.30, and § 1.32, to implement section 4d(a)(2) of the Act, and adopted Part 22 to implement section 4d(f) of the Act. The purpose of these regulations is to safeguard funds deposited by futures customers and Cleared Swaps Customers, respectively.

Regulation 1.20 requires each FCM and DCO to separately account for and to segregate from its own proprietary funds all money, securities, or other property deposited by futures customers for trading on designated contract markets. Regulation 1.20 also provides that an FCM or DCO may deposit futures customer funds only with a bank, trust company, and for FCMs only, a DCO or another FCM. The funds must be deposited under an account

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2012). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

[2] 7 U.S.C. 6d(a)(2).

[3] 7 U.S.C. 1 *et seq.*

[4] The term '' futures customer'' is defined in § 1.3(iiii) to include any person who uses a futures commission merchant as an agent in connection with trading in any contract for the purchase or sale of a commodity for future delivery or an option on such contract (excluding any proprietary accounts under § 1.3(y)). The Commission adopted the definition of the term ''futures customer'' on October 16, 2012 as part of the final rulemaking that amended existing Commission regulations to incorporate swaps. The **Federal Register** release adopting the final rules can be accessed at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister101612.pdf.*

[5] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[6] The term ''Cleared Swaps Customer'' is defined in § 22.1 as any person entering into a Cleared Swap, but excludes: (1) Any owner or holder of a Cleared Swaps Proprietary Account with respect to the Cleared Swaps in such account; and (2) A clearing member of a DCO with respect to Cleared Swaps cleared on that DCO.

name that clearly identifies the funds as belonging to the futures customers of the FCM or DCO and further shows that the funds are segregated as required by section 4d(a)(2) of the Act and Commission regulations. FCMs and DCOs also are required to obtain a written acknowledgment from a depository stating that the depository was informed that funds deposited are customer funds being held in accordance with the Act.

FCMs and DCOs also are restricted in their use of futures customer funds. Regulations 1.20 and 1.22 provide that the funds deposited by one futures customer may not be used to margin or to secure the contracts or option positions, or extend credit to any person, other than the futures customer that deposited the funds. An FCM or DCO, however, may for convenience commingle and hold funds deposited as margin by multiple futures customers in the same account or accounts with one of the recognized depositories. An FCM or DCO also may invest futures customer funds in certain permitted investments under § 1.25.

Part 22 of the Commission's regulations, which governs Cleared Swaps transactions, implements section 4d(f) of the Act and parallels many of the provisions in Part1 addressing the manner in which, and the responsibilities imposed upon, an FCM holding funds for futures customers trading on designated contract markets.[7] Regulation 22.2 requires an FCM to treat and to deal with funds deposited by Cleared Swaps Customers as belonging to such Cleared Swaps Customers and to hold such funds separately from the FCM's own funds. Regulation 22.4 provides that an FCM may deposit Cleared Swaps Customer Collateral with a bank, trust company, DCO, or another registered FCM. Regulation 22.6 requires that the account holding the Cleared Swaps Customers Collateral must clearly identify the account as an account for Cleared Swaps Customers of the FCM engaging in cleared swap transactions and that the funds maintained in the account are subject to the segregation provisions of section 4d(f) of the Act and Commission regulations.

Regulation 22.2(d) also prohibits an FCM from using the funds deposited by one Cleared Swaps Customer to purchase, margin, or settle cleared swap transactions of any person other the Cleared Swaps Customer that deposited the funds. Further, § 22.2(c) permits an FCM to commingle the Cleared Swaps Customer Collateral of multiple Cleared Swaps Customers into one or more accounts, and § 22.2(e)(1) permits an FCM to invest Cleared Swaps Customer Collateral in permitted investments under § 1.25.

In addition to holding funds for futures customers transacting on designated contract markets and for Cleared Swaps Customers engaging in cleared swap transactions, FCMs also hold funds for persons trading futures contracts listed on foreign boards of trade. Section 4(b) of the Act provides that the Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of the funds deposited by persons for trading on foreign markets, and registration with the Commission by any person located in the United States who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made subject to the rules of a board of trade located outside of the United States. Pursuant to the statutory authority of section 4(b), the Commission adopted Part 30 of its regulations to address foreign futures and foreign option transactions.

The segregation provisions for funds deposited by foreign futures or foreign options customers to margin foreign futures or foreign options transactions under Part 30, however, are significantly different from the requirements set forth in § 1.20 for futures customers trading on designated contract markets and Part 22 for Cleared Swaps Customers engaging in cleared swap transactions. Regulation 30.7 provides that an FCM may deposit the funds belonging to foreign futures or foreign options customers in an account or accounts maintained at a bank or trust company located in the United States; a bank or trust company located outside of the United States that has in excess of $1 billion of regulatory capital; an FCM registered with the Commission; a DCO; a member of a foreign board of trade; a foreign clearing organization; or a depository selected by the member of a foreign board of trade or foreign clearing organization. The account with the depository must be titled to clearly specify that the account holds funds belonging to the foreign futures or foreign options customers of the FCM that are trading on foreign futures markets. An FCM also is permitted to invest the funds deposited by foreign futures or foreign option customers in accordance with § 1.25.

However, unlike § 1.20 and Part 22, which require an FCM to hold a sufficient amount of funds in segregation to meet the total account equities of all of the FCM's futures customers and Cleared Swaps Customers at all times (*i.e.,* the Net Liquidating Equity Method), § 30.7 requires an FCM to maintain in separate accounts an amount of funds only sufficient to cover the margin required on open foreign futures contracts, plus or minus any unrealized gains or losses on such open positions, plus any funds representing premiums payable or received on foreign options (including any additional funds necessary to secure such options, plus or minus any unrealized gains or losses on such options) (*i.e.,* the ''Alternative Method''). Thus, under the Part 30 Alternative Method an FCM is not required to maintain a sufficient amount of funds in such separate accounts to pay the full account balances of all of its foreign futures or foreign options customers at all times.

In addition to the segregation requirements of sections 4d(a)(2) and 4d(f) of the Act, and the secured amount requirements in Part 30 of the Commission's regulations, FCMs also are subject to minimum net capital and financial reporting requirements that are intended to ensure that such firms meet their financial obligations in a regulated marketplace, including their financial obligations to customers and DCOs. Each FCM is required to maintain a minimum level of ''adjusted net capital,'' which is generally defined under § 1.17 as the firm's net equity as computed under generally accepted accounting principles, less all of the firm's liabilities and further excluding all assets that are not liquid or readily marketable. Regulation 1.17(c)(5) further requires an FCM to impose capital charges (*i.e.,* deductions) on certain of its liquid assets to protect against possible market risks in such assets.

FCMs also are subject to financial recordkeeping and reporting requirements. FCMs that carry customer accounts are required under § 1.32 to prepare a schedule each business day demonstrating their compliance with the segregation and secured amount requirements. Regulation 1.32 requires the calculation to be performed by noon each business day, reflecting the account balances and open positions as of the close of business on the previous business day.

Each FCM also is required by § 1.10 to file with the Commission and with its

[7] The Commission approved the part 22 regulations on January 11, 2012, with an effective date of April 9, 2012. Compliance with the part 22 regulations is required by November 8, 2012. *See, Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions,* 77 FR 6336 (Feb. 7, 2012).

designated self-regulatory organization (''DSRO'') monthly unaudited financial statements and an annual audited financial report, as well as notices of certain predefined events.[8] Regulation 1.12 requires an FCM to file a notice with the Commission and with the firm's DSRO whenever, among other things, the firm: (1) Fails to maintain compliance with the Commission's capital requirements; (2) fails to hold sufficient funds in segregated or secured amount accounts to meet its regulatory requirements; (3) fails to maintain current books and records; or (4) experiences a significant reduction in capital from the previous month-end. The purpose of the regulatory notices is to alert the Commission and the firm's DSRO as early as possible to potential financial issues at the firm that may adversely impact the ability of the FCM to comply with its obligations to safeguard customer funds, or to meet its financial obligations to other FCMs or DCOs.

The statutory mandate to segregate customer funds—to treat them as belonging to the customer and not use the funds inappropriately—takes on greater meaning in light of the devastating events experienced over the past year. Those events, which are discussed in greater detail below, demonstrate that the risks of misfeasance and malfeasance, and the risks of failing to maintain sufficient excess funds in segregation: (i) Put customer funds at risk; and (ii) are exacerbated by stresses on the business of the FCM. Many of those risks can be mitigated significantly by better risk management systems and controls, along with an increase in risk-oriented oversight and examination of the FCMs.

Determining what is a ''sufficient'' amount of excess funds in segregation for any particular FCM requires a full understanding of the business of that FCM, including a proper analysis of the factors that affect the actual amount of segregated funds held by the FCM relative to the minimum amount of segregated funds it is required to hold. Further, appropriate care must be taken to avoid withdrawing such excess funds at times of great stress to cover needs unrelated to the purposes for which excess segregated and secured funds are maintained. In times of stress, excess funds may look like an easy liquidity source to help cover other risks of the business; yet withdrawing it makes it unavailable when it may be most needed. The recent market events illustrate both the need to: (i) Require that care be taken about monitoring excess segregated and secured funds, and the conditions under and the extent to which such funds may be withdrawn; and (ii) place appropriate risk management controls around the other risks of the business to help relieve (A) the likelihood of an exigent event or, (B) if such an event occurs, the likelihood of a failure to prepare for such an event, which in either case could create pressures that result in an inappropriate withdrawal of customer funds.

Although the Commission's existing regulations provide an essential foundation to fostering a well-functioning marketplace, wherein customers are protected and institutional risks are minimized, recent events have demonstrated that additional measures are necessary to effectuate the fundamental purposes of the statutory provisions discussed above. Further, concurrently with the enhanced responsibilities for FCMs that are proposed herein, the oversight and examination systems must be enhanced to mitigate risks and effectuate the statutory purposes.

B. Self-Regulatory Structure

The Commission's oversight structure provides that SROs are the frontline regulators of FCMs, introducing brokers (''IBs''), commodity pool operators, and commodity trading advisors. In 2000, Congress affirmed the Commission's reliance on SROs by amending section 3 of the Commodity Exchange Act to state: ''It is the purpose of this Act to serve the public interests through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.''

As part of its oversight responsibility, an SRO is required to conduct periodic examinations of member FCMs' compliance with Commission and SRO financial and related reporting requirements, including the FCMs' holding of customer funds in segregated and secured accounts. The Commission oversees the SROs by examining them for the performance of their duties. More recently, the Commission has moved to conducting quarterly reviews of the SROs' FCM examination program in which the Commission selects a small sample of the SRO's FCM work papers to review. In addition, the Commission also conducts limited-scope reviews of FCMs in a ''for cause'' situation that are sometimes referred to as ''audits,'' but they are not full-scale audits as accountants commonly use that term.

In addition, because there are multiple SROs who share the same member FCMs, to avoid subjecting FCMs to duplicative examinations from SROs, the Commission has a permissive system that allows the SROs to agree how to allocate FCMs amongst them. An SRO who is allocated certain FCMs for such examination is referred to as the DSRO of those FCMs.

Under Commission regulations, FCMs must have their annual financial statements audited by an independent certified public accountant following U.S. Generally Accepted Auditing Standards (''U.S. GAAS''). As part of this certified annual report, the independent accountant also must conduct appropriate reviews and tests to identify any material inadequacies in systems and controls that could violate the Commission's segregation or secured amount requirements. Any such inadequacies are required to be reported to the FCM's DSRO and to the Commission.

C. Futures Commission Merchant Insolvencies and Failures of Risk Management

Recent events demonstrate the need for revisions to the Commission's customer protection regime. Since October 2011, two FCMs have entered into insolvency proceedings. On October 31, 2011, MF Global, Inc. (''MFGI''), which was dually-registered as an FCM with the Commission and as a securities broker-dealer (''BD'') with the U.S. Securities and Exchange Commission (''SEC''), was placed into a liquidation proceeding under the Securities Investor Protection Act by the Securities Investor Protection Corporation (''SIPC''). The trustee appointed to oversee the liquidation of MFGI has reported a potential $900 million shortfall of funds necessary to repay the account balances due to customers trading futures on designated contract markets, and an approximately $700 million shortfall in funds immediately available to repay the account balances of customers trading on foreign futures markets.[9] The shortfall in customer segregated accounts is attributable by the MFGI Trustee to significant transfers of funds out of the customer accounts that were used by MFGI for various purposes other than to meet obligations to or on

[8] The term ''self-regulatory organization'' is defined by § 1.3 to mean a contract market, a swap execution facility, or a registered futures association. A DSRO is the SRO that is appointed to be primarily responsible for conducting ongoing financial surveillance of an FCM under a joint audit agreement submitted to and approved by the Commission under § 1.52.

[9] *See Report of the Trustee's Investigation and Recommendations, In re MF Global Inc.,* No. 11–2790 (MG) SIPA (Bankr. S.D.N.Y. Jun. 4, 2012).

behalf of customers. The trustee also is attempting to recover approximately $640 million of customer funds that was deposited by MFGI with its London, U.K. affiliate, MFGUK, as margin funds for trading on foreign markets. The MFGI trustee and the Special Administrators handling the liquidation of MFGUK are disputing the legal status of the funds and whether they are customer funds under English law. The outcome of this dispute will have a significant impact on the amount of funds that are returned to MFGI.

In addition, the Commission filed a civil injunctive complaint in federal district court on July 10, 2012, against Peregrine Financial Group, Inc. (''PFG''), a registered FCM and its Chief Executive Officer (''CEO'') and sole owner, Russell R. Wasendorf, Sr., alleging that PFG and Wasendorf, Sr. committed fraud by misappropriating customer funds, violated customer fund segregation laws, and made false statements regarding the amount of funds in customer segregated accounts in financial statements filed with the Commission. The complaint states that in July 2012 during an NFA examination PFG falsely represented that it held in excess of $220 million of customer funds when in fact it held approximately $5.1 million.[10]

Recent incidents also have demonstrated the value of establishing robust risk management systems within FCMs and enhanced early warning systems to detect and address capital issues. In particular, problems that arise through an FCM's non-futures-related business can have a direct and significant impact on the FCM's regulatory capital, raising questions as to whether the FCM will be able to maintain the minimum financial requirements mandated by the Act and Commission regulations.[11]

These recent incidents have highlighted weaknesses in the customer protection regime prescribed in the Commission's regulations and through the self-regulatory system. In particular, questions have arisen on the requirements surrounding the holding and investment of customer funds, including the ability of FCMs to withdraw funds from customer segregated accounts and Part 30 secured accounts. Additionally, the incidents have underscored the need for additional safeguards—such as robust risk management systems, strengthened early-warning systems surrounding margin and capital requirements, and enhanced public disclosures—to promote the protection of customer funds and to minimize the systemic risk posed by certain actions of market participants. Further questions have arisen on the system of audits and examinations of FCMs, and whether the system functions adequately to monitor FCMs' activities, verify segregated fund and secured amount balances, and detect fraud. Consequently, the Commission has taken steps to study and address the issues raised by the incidents, and industry participants likewise have taken steps to address the issues. Such steps are described in greater detail in the next section.

D. Recent Commission Rulemakings and Other Initiatives Relating to Customer Protection

Since late 2011, the Commission has promulgated rules directly impacting the protection of customer funds. The Commission also has studied the current regulatory framework surrounding customer protection, particularly in light of the recent incidents outlined above, in order to identify potential enhancements to the systems and Commission regulations protecting customer funds. The Commission's efforts have been informed, in part, by efforts undertaken by industry participants. The proposed rule amendments set forth in this release have been informed by the efforts detailed below.

In December 2011, the Commission adopted final rule amendments revising the types of investments that an FCM or DCO can make with customer funds under § 1.25, for the purpose of affording greater protection for such funds.[12] Among other changes to §§ 1.25 and 30.7, the final rule amendments removed from the list of permitted investments: (1) corporate debt obligations not guaranteed by the United States; (2) foreign sovereign debt; and (3) in-house and affiliate transactions.

In adopted the amendments to § 1.25, the Commission was mindful that customer segregated funds must be invested by FCMs and DCOs in a manner that minimizes their exposure to credit, liquidity, and market risks both to preserve their availability to customers and DCOs, and to enable investments to be quickly converted to cash at a predictable value in order to avoid systemic risk. The amendments are consistent with the general prudential standard contained in § 1.25, which provides that all permitted investments must be ''consistent with the objectives of preserving principal and maintaining liquidity.''

The Commission also approved final regulations that require DCOs to collect initial customer margin from FCMs on a gross basis.[13] Under the final regulations, FCMs are no longer permitted to offset one customer's margin requirement against another customer's margin requirements and deposit only the net margin collateral with the DCO. As a result of the rule change, a greater portion of customer initial margin will be posted by FCMs to the DCOs.

The Commission also approved a new margining regime for cleared swaps positions.[14] Under the traditional futures margining model, DCOs hold an FCM's customer funds on a collective basis and are permitted to use the collective margin funds held for the FCM's customers to satisfy a margin deficiency caused by a single customer. The Commission approved an alternative margin rule for cleared swap transactions. Under the ''LSOC rule'' (legal segregation with operational comingling), the DCOs that clear swaps transactions have greater information regarding the margin collateral of individual Swaps Customers, and each Swaps Customer's collateral is protected individually all the way to the clearinghouse.

The Commission also included customer protection enhancements in the final rule for designated contract markets. These provisions codify into rules staff guidance on minimum requirements for SROs regarding their financial surveillance of FCMs.[15] The rules require that a DCM have arrangements and resources for effective

[10] Complaint, *U.S. Commodity Futures Trading Commission v. Peregrine Financial Group, Inc., and Russell R. Wasendorf, Sr.,* No. 12–cv–5383 (N.D. Ill. July 10, 2012). A copy of the Commission's complaint has been posted to the Commission's Web site.

[11] *See, e.g.,* Edward Krudy, Jed Horowitz and John McCrank, ''Knight's Future in Balance After Trading Disaster,'' Reuters (Aug. 3, 2012), *available at http://in.reuters.com/article/2012/08/03/knightcapital-loss-idINL2E8J27QE20120803* (noting that a software issue caused the firm to incur a $440 million trading loss, which represented much of the firm's capital); Chris Dieterich and Nathalie Tadena, ''Penson Worldwide's US Securities Accounts To Be Acquired By Apex Clearing,'' available at *http://online.wsj.com/article/BT-CO-20120531-717791.html* (discussing circumstances that led Penson to sell its futures business).

[12] *See,* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

[13] *See* Commission Regulation 39.12(g)(8)(i) and *Derivatives Clearing Organization General Provisions and Core Principles,* 76 FR 69334 (Nov. 8, 2011).

[14] *See* 77 FR 6336 (Feb. 7, 2012).

[15] *See Core Principles and Other Requirements for Designated Contract Markets,* 77 FR 36612 (June 19, 2012).

rule enforcement and trade and financial surveillance programs, including the authority to collect information and examine books and records of members and market participants. The rules also establish minimum financial standards for both member FCMs and IBs and non-intermediated market participants. The Commission expressly noted in the preamble of the Adopting Release that ''a DCM's duty to set financial standards for its FCM members involves setting capital requirements, conducting surveillance of the potential future exposure of each FCM as compared to its capital, and taking appropriate action in light of the results of such surveillance.'' [16] Further, the rules mandate that DCMs adopt rules for the protection of customer funds, including the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures and related recordkeeping.

In addition to the rulemaking efforts outlined above, the Commission has sought additional information through a series of roundtables and other meetings. On February 29 and March 1, 2012, the Commission solicited comments and held a public roundtable to solicit input on customer protection issues from a broad cross-section of the futures industry, including market participants, FCMs, DCOs, SROs, securities regulators, foreign clearing organizations, and academics.[17] The roundtable focused on issues relating to the advisability and practicality of modifying the segregation models for customer funds; alternative models for the custody of customer collateral; enhancing FCM controls over the disbursement of customer funds; increasing transparency surrounding an FCM's holding and investment of customer funds; and lessons learned from recent commodity brokerage bankruptcy proceedings.

The Commission also hosted a public meeting of the Technology Advisory Committee (''TAC'') on July 26, 2012.[18] Panelists and TAC members discussed potential technological solutions directed at enhancing the protection of customers funds by identifying and exploring technological issues and possible solutions relating to the ability of the Commission, SROs and customers to verify the location and status of funds held in customer segregated accounts.

Commission staff hosted an additional roundtable on August 9, 2012, to discuss SRO requirements for examinations of FCMs and Commission oversight of SRO examination programs. The roundtable also focused on the role of the independent public accountant in the FCM examination process, and proposals addressing various alternatives to the current system for segregating customer funds.

In developing the proposals set forth in this release, the Commission also has been informed by efforts undertaken by industry participants. On February 29, 2012, the Futures Industry Association (''FIA'') initiated steps to educate customers on the extent of the protections provided under the current regulatory structure. FIA issued a list of Frequently Asked Questions (''FAQ'') prepared by members of the FIA Law and Compliance Division addressing the basics of segregation, collateral management and investments, capital requirements and other issues for FCMs and joint FCM/BDs, and clearinghouse guaranty funds.[19] The FAQ is intended to provide existing and potential customers with a better understanding of the risks of engaging in futures trading and a clear explanation of the extent of the protections provided to customers and their funds under the Act and Commission regulations.

FIA also issued a series of initial recommendations for the protection of customer funds.[20] The recommendations were prepared by the Financial Management Committee, whose members include representatives of FIA member firms, DCOs and depository institutions. The initial recommendations address enhanced disclosure on the protection of customer funds, reporting on segregated funds balances by FCMs, FCM internal controls surrounding the holding and disbursement of customer funds, and revisions to Part 30 regulations to make the protections comparable to those provided for customers trading on designated contract markets.

On July 13, 2012, the Commission approved new FCM financial requirements proposed by the National Futures Association (''NFA'').[21] The NFA Financial Requirements Section 16 and its related Interpretive Notice entitled *NFA Financial Requirements Section 16: FCM Financial Practices and Excess Segregated Funds/Secured Amount Disbursements* (collectively referred to as ''the Segregated Funds Provisions'') were developed in consultation with Commission staff.

NFA's Segregated Funds Provisions require each FCM to: (1) Maintain written policies and procedures governing the deposit of the FCM's proprietary funds (*i.e.,* excess or residual funds) in customer segregated accounts and Part 30 secured accounts; (2) maintain a targeted amount of excess funds in segregate accounts and Part 30 secured accounts; (3) file on a daily basis the FCM's segregation and Part 30 secured amount computations with NFA; (4) obtain the approval of senior management prior to a withdrawal that is not for the benefit of customers, whenever the withdrawal equals 25 percent or more of the excess segregated or Part 30 secured amount funds; (5) file a notice with NFA of any withdrawal that is not for the benefit of customers, whenever the withdrawal equals 25 percent or more of the excess segregated or Part 30 secured amount funds; (6) file detailed information regarding the depositories holding customer funds and the investments made with customer funds as of the 15th day (or the next business day if the 15th is not a business day) and the last business day of each month; and (7) file additional monthly net capital and leverage information with NFA.

Significantly, NFA's Segregated Funds Provisions also require FCMs to compute their Part 30 secured amount requirement and compute their targeted excess Part 30 secured funds using the same Net Liquidating Equity Method that is required by the Act and Commission regulations for computing the segregation requirements for customers trading on U.S. contract markets under section 4d of the Act. FCMs are not permitted under the NFA rules to use the Alternative Method to compute the Part 30 secured amount requirement. The failure of an FCM to maintain its targeted amount of excess Part 30 funds computed using the Net

[16] *Id.* at 36646.

[17] Further information on the public roundtable, including video recordings and transcripts of the discussions, have been posted to the Commission's Web site. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff022912* (relating to Feb. 29, 2012); *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff030112* (relating to Mar. 1, 2012).

[18] Additional information, including documents submitted by meeting participants, has been posted to the Commission's Web site. See *http://www.cftc.gov/PressRoom/Events/opaevent_tac072612.*

[19] The FIA's release addressing FAQs on the protection of customer funds is accessible on the FIA's Web site at *http://www.futuresindustry.org/downloads/PCF–FAQs.PDF.*

[20] The FIA's initial recommendations are accessible on the FIA's Web site at *http://www.futuresindustry.org/downloads/Initial_Recommendations_for_Customer_Funds_Protection.pdf.*

[21] For more information relating to the new FCM financial requirements, see *http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4072.*

Liquidating Equity Method may result in NFA initiating a Membership Responsibility Action (''MRA'') against the firm.

In addition, in setting the target amount of excess funds, the FCM's management must perform a due diligence inquiry and consider various factors relating, as applicable, to the nature of the FCM's business, including the type and general creditworthiness of the FCM's customers, the trading activity of the customers, the types and volatility of the markets and products traded by the FCM's customers, and the FCM's own liquidity and capital needs. The FCM's Board of Directors (or similar governing body), CEO or Chief Financial Officer (''CFO'') must approve in writing the FCM's targeted residual amount, any changes thereto, and any material changes in the FCM's written policies and procedures.

The NFA Board of Directors also approved on August 16, 2012, amendments to NFA financial requirements for FCMs that will require each FCM to provide its DSRO with view-only access via the Internet to account information for each of the FCM's customer segregated funds account(s) maintained and held at a bank or trust company. The same requirement would apply to the FCM's customer secured account(s) held for customers trading on foreign futures exchanges.

In addition, the NFA rule amendments provide that if a bank or trust company is unable to allow the FCM to provide its DSRO with view-only full access via the Internet, the bank or trust company will not be deemed an acceptable depository to hold customer segregated and secured accounts. NFA intends to expand its oversight of FCMs under the amended rules, once the amendments are implemented, to receive daily reports from all depositories for customer segregated and secured accounts, including FCMs that are clearing members of DCOs. NFA plans to develop a program to compare the balances reported by the depositories with the balances reported by the FCMs in their daily segregation reports. An immediate alert would be generated for any material discrepancies.

E. Commission's Proposal

The incidents outlined above, coupled with the information generated through the recent efforts undertaken by the Commission and industry participants, demonstrate the need for new rules and amendments to existing rules. In particular, an examination of FCM business operations—including the non-futures business of FCMs—and the currently regulatory framework evince a need for enhanced customer protections, risk management programs, disclosure requirements, and auditing and examination programs. The amendments proposed herein address these issues in several ways.

First, recognizing problems surrounding the treatment of customer segregated funds and foreign futures or foreign options secured amounts, the Commission is proposing to amend several components of Parts 1, 22, and 30 of the Commission's regulations. The Commission believes that the proposed amendments will provide greater certainty to market participants that the customer funds entrusted to FCMs will be protected. Second, to address shortcomings in the risk management of FCMs, the Commission is proposing a new § 1.11 that will establish robust risk management programs. Third, the Commission determined that the current regulatory framework should be re-oriented to implement a more risk-based, forward-looking perspective, affording the Commission and SROs with read-only access to accounts holding customer funds and additional information on depositories and the customer assets held in such depositories. The proposed amendments to §§ 1.10, 1.12, 1.20, 1.26, and 1.32 address those and other issues. Fourth, given the difficulties that can arise in an FCM's business, and the direct and significant impact on the FCM's regulatory capital that can result from such difficulties, the Commission is proposing to amend § 1.17(a)(4) to ensure that an FCM's capital and liquidity are sufficient to safeguard the continuation of operations at the FCM. Fifth, to effect the change in orientation needed in FCM examinations programs, as well as to assure quality control over program contents, administration and oversight, the Commission is proposing to amend § 1.52, which, among other things, addresses the formation of Joint Audit Committees and the implementation of Joint Audit Programs. And sixth, recognizing the need to increase the information provided to customers concerning the risks of futures trading and the FCMs with which they may choose to conduct business, the Commission is proposing amendments to § 1.55 that will enhance the disclosures provided by FCMs. These amendments are discussed in greater detail in the next Section.

II. Section by Section Analysis of Proposed Commission Regulations and Proposed Amendments to Existing Commission Regulations

A. Proposed Amendments to § 1.10: Financial Reports of Futures Commission Merchants and Introducing Brokers

Regulation 1.10 requires each FCM to file with the Commission and with the firm's DSRO an unaudited financial report each month. The financial report must be prepared using Form 1–FR–FCM. An FCM, however, that is dually-registered as a BD, may file a Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (''FOCUS Report'') in lieu of the Form 1–FR–FCM. Each FCM also is required to file an annual report certified by an independent public accountant with the Commission and with its DSRO.

The unaudited monthly and certified annual financial reports are required to contain basic financial statements including a statement of financial condition, a statement of income (loss), and a statement of changes in ownership equity. The financial statements also are required to include additional schedules designed to address specific regulatory objectives to demonstrate that the FCM is in compliance with minimum capital and customer funds segregation requirements. These additional schedules include a statement of changes in liabilities subordinated to claims of general creditors, a statement of the computation of the minimum capital requirements (''Capital Computation Schedule''), a statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges (''Segregation Schedule'') and a statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers (''Secured Amount Schedule''). In addition, the certified annual report must contain a reconciliation of material differences between the Capital Computation Schedule, the Segregation Schedule, and the Secured Amount Schedule contained in the certified annual report and the unaudited monthly report for the FCM's year-end month.

The Forms 1–FR–FCM and the FOCUS Reports are necessary financial reporting for Commission and DSRO staff to assess the ongoing financial condition of an FCM and provide significant information regarding the operations of the firm that may impact the FCM's ability to maintain

compliance with Commission requirements and the protection of customer funds. The Form 1–FR–FCM and FOCUS Reports are filed electronically with the Commission and are subject to automated edits by the Commission's financial statement surveillance software. Alerts and edit checks, which may indicate a need for further analysis and follow-up by staff, are generated by the financial surveillance software and major issues are immediately and automatically forwarded to Commission staff for review.

The Segregation Schedule and the Secured Amount Schedule generally indicate, respectively, the total amount of funds held by the FCM in segregated or secured accounts, the total amount of funds that the FCM must hold in segregated or secured accounts to meet its regulatory obligations to futures customers and foreign futures or foreign options customers, and whether the firm holds excess segregated or secured funds in the segregated or secured accounts as of the reporting date. The Commission is proposing to amend § 1.10 to require each FCM to also disclose in the Segregation Schedule and in the Secured Amount Schedule [22] a target amount of ''residual interest'' (denoting the FCM's proprietary funds) that the FCM is required to maintain in customer segregated accounts and secured accounts based upon its written policies and procedures for computing a targeted amount required under the new risk management provisions in § 1.11 discussed in Section II.B below.[23] In addition to the target amount of residual interest, the FCM also will be required to report on the Segregation Schedule and the Secured Amount Schedule the sum of outstanding margin deficits of the relevant customers for each computation, to ensure that the residual interest is at all times in excess of such sum, demonstrating compliance with the newly proposed procedures in §§ 1.22 and 1.23, which shall require residual interest to exceed the sum of such margin deficits.

As more fully discussed in Section II.B below, proposed § 1.11 will require each FCM that carries customer funds to determine a necessary level of excess segregated and secured funds that the firm should hold in segregated or secured accounts to ensure against becoming undersegregated or undersecured as a result of the withdrawal of proprietary funds from segregated or secured accounts. Each FCM is required under proposed § 1.11 to compute or determine the necessary target of residual interest based upon appropriate due diligence and consideration of various factors relating to the nature of the FCM's business,[24] including the type and general creditworthiness of the customer base, the amount of the undermargined customer accounts on any given day, and the volatility and liquidity of the markets and products traded by customers.

The disclosure of the targeted amount of the FCM's residual interest in segregated or secured accounts will allow the Commission and DSRO to assess the size of the target relative to both the total funds held in segregation or secured accounts and to compare the target to other FCMs. Such information will assist the Commission and DSROs in assessing the potential risk that a firm may become undersegregated or undersecured, and will enhance the Commission's and DSRO's ability to protect customer funds.

The Commission also is proposing to revise Form 1–FR–FCM to adopt a new ''Statement of Cleared Swap Customer Segregation Requirements and Funds in Cleared Swap Customer Accounts Under Section 4d(f) of the Act'' (''Cleared Swaps Segregation Schedule''). The Commission is proposing the Cleared Swaps Segregation Schedule to implement provisions in section 724(a) of the Dodd-Frank Act.[25] Section 724(a) amended section 4d of the Act, and requires an FCM to segregate from its own assets any money, securities and other property deposited by a Cleared Swaps Customer to margin its cleared swaps positions. As part of the implementation of section 724(a) of the Dodd-Frank Act, the Commission adopted § 22.2(g) which requires an FCM to compute, as of the close of business each business day, a segregation computation demonstrating compliance with its obligation to hold sufficient funds in segregated accounts in an amount sufficient to cover the total Net Liquidating Equity of each of the FCM's Cleared Swaps Customers.[26] The proposed Cleared Swaps Segregation Schedule will be comparable to the current Segregation Schedule and will allow the Commission and the FCM's DSRO to obtain information on the FCM's holding of Cleared Swaps Customer Collateral to ensure that such funds are held in accordance with the provisions of Part 22 of the Commission's regulations and that the FCM is reporting that it has sufficient funds in segregated accounts to meet its obligations to all of its Cleared Swaps Customers computed under the Net Liquidating Equity Method.

The Commission previously proposed a Cleared Swaps Segregation Schedule as part of its proposed regulations to adopt capital requirements for swap dealers and major swap participants.[27] In light of the Commission's decision to revise the Cleared Swaps Segregation Schedule from the version that was published for comment as part of the Commission's proposed capital rules for swap dealers and major swap participants by requiring the FCM to separately disclose its targeted residual interest in Cleared Swaps Customer Accounts and the sum of margin deficits for such accounts, the Commission is republishing the Cleared Swaps Segregation Schedule as part of this proposal to provide the public with an opportunity to comment on the proposal.[28]

The Commission also is proposing to amend § 1.10(g)(2) to provide that the Cleared Swaps Segregation Schedule is a public document. Regulation 1.10 currently provides that the Commission will treat the monthly Form 1–FR–FCM

[22] The Commission also proposes to revise the title of the ''Secured Amount Schedule'' by adding the term ''30.7 Customer'' to specify that the secured amount will include both U.S.-domiciled and foreign-domiciled customers consistent with the proposed amendments to Part 30 of the Commission Regulations discussed in Section II.R below.

[23] The NFA recently adopted a similar amendment to its rules, mandating that its member FCMs maintain written policies and procedures identifying a target amount that the FCM will seek to maintain as its residual interest in customer segregated and secured accounts. *See* NFA Notice I–12–14 (July 18, 2012), available at *http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4072.*

[24] The term ''Cleared Swaps Customer Collateral'' is defined in § 22.1 to mean all money, securities, or other property received by a futures commission merchant or by a derivatives clearing organization from, for, or on behalf of a Cleared Swaps Customer to margin a Cleared Swap or the settlement value of a Cleared Swap, and includes any accruals on such Cleared Swap transactions.

[25] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[26] *See* 77 FR 6336 (February 7, 2012).

[27] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 76 FR 27802 (May 12, 2011).

[28] Regulation 1.10(h) provides that a dually-registered FCM/BD may file a FOCUS Report in lieu of the Form 1–FR–FCM provided that all information that is required to be included in the Form 1–FR–FCM is included in the FOCUS Report. Currently, dual-registrant FCM/BDs include a Segregation Schedule and a Secured Amount Schedule in the FOCUS Report filings as supplemental schedules. If the Commission were to adopt a Cleared Swaps Segregation Schedule, dual-registrant FCM/BDs would have to include such schedule in their Focus Report filings.

reports and monthly FOCUS Reports as exempt from mandatory public disclosure for purposes of the Freedom of Information Act and the Government in the Sunshine Act, except for certain capital numbers and other financial information including the Segregation Schedules and the Secured Amount Schedules contained in the financial reports. The Commission is proposing to amend § 1.10(g)(2) to provide that the Cleared Swaps Segregation Schedule is a public document in the same manner as the Segregation Schedule and Secured Amount Schedule, and is available by requesting copies from the Commission.

Making the Cleared Swaps Segregation Schedule publicly available will benefit customers and potential customers by allowing them to review an FCM's compliance with its regulatory obligations and will provide a certain amount of detail as to how the FCM holds customer funds, which customers and potential customers will be able to assess from a risk perspective and also use to compare to other firms. This information, coupled with additional firm risk disclosures that the Commission is proposing in § 1.55 and discussed in detail in Section II.P below, will provide customers with greater transparency regarding the risks of entrusting their funds and engaging in transactions with particular FCMs. Customers also will be able to view the total amount of the targeted residual interest each FCM holds and to assess for themselves the adequacy of the targeted residual interest and whether the FCM holds funds in excess of the targeted residual interest.

The Commission also is proposing to amend several statements in the Form 1–FR–FCM. The Commission is proposing to amend the Statement of Financial Condition by adding a new line item 1.D. Line 1 currently separately details the amount of funds in segregation or separate accounts for futures customers and foreign futures or foreign option customers. Proposed line item 1.D. will set forth the amount of funds held by the FCM in segregated accounts for Cleared Swaps Customers. This amendment is necessary due to the adoption of the Part 22 regulations, which require the segregation of Cleared Swaps Customer Collateral and the proposed adoption of the Cleared Swaps Segregation Schedule as part of the Form 1–FR–FCM.

The Commission also is proposing to amend the Statement of Financial Condition by adding a new line item 22.F., which requires the separate disclosure of the FCM's liability to Cleared Swaps Customers. The Commission also is proposing to revise current line item 27.J. to require the FCM to disclose its obligation to retail forex customers. Currently, an FCM's obligation to retail forex customers is included with other miscellaneous liabilities and reported under current line item 27.J. ''Other.'' The separate reporting of an FCM's retail forex obligation will provide greater transparency on the Statement of Financial Condition regarding the firm's obligations to its retail counterparties in off-exchange foreign currency transactions, and is appropriate given the Commission's direct jurisdiction over such activities under section 2(c) of the Act when conducted by an FCM.

The Commission also is proposing to amend § 1.10(b)(1)(ii) to require that an FCM submit its certified annual report to the Commission and to its DSRO within 60 days of its year-end date. Currently, an FCM is required to submit the annual certified financial statements within 90 days of the firm's year-end date, except for FCMs that are dually-registered as FCM/BDs, which are require to submit the certified annual report within 60 days of the year-end date under both Commission and SEC regulations. Therefore, the proposal will only impact FCMs that are not dually-registered as BDs.

The proposal will align the filing deadlines for both FCMs and dual registrant FCMs/BDs. The annual certified financial report is a key component of the Commission's and DSROs' financial surveillance program, as it represents that an independent entity has conducted an audit following U.S. generally accepted auditing standards for the purpose of expressing an opinion on the financial statements of the FCM. Requiring standalone FCMs to submit the certified financial statements within 60 days of the firm's year-end date will allow Commission and DSRO staff to review the financial statements on a more timely basis to identify and address accounting or auditing issues that may impact the financial condition of the FCM.

In addition, the Commission notes that, pursuant to § 3.3(f)(2), the annual report of an FCM's CCO must be furnished electronically to the Commission simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii); simultaneously with the FOCUS Report, as required under § 1.10(h); or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable. Given the 60-day deadline proposed herein, the Commission is proposing a conforming amendment to § 3.3(f)(2) to reflect the proposed 60-day deadline.

The Commission is proposing to add a new requirement in § 1.10(b)(5) to require each FCM to file with the Commission on a monthly basis its balance sheet leverage ratio. FCMs currently are required to file the same leverage information with the NFA on a monthly basis. The Commission does not expect the imposition of this regulation to have any significant impact on the FCMs as the ratio is calculated from existing reported balances and already provided to NFA.

The leverage ratio will provide information regarding the amount of assets supported by the FCM's capital base. The Commission views leverage information as an important element in assessing the financial condition of an FCM as a high degree of balance sheet leverage may indicate that the firm does not have the capital to support its investment decisions, particularly if such investments loose a significant amount of their value in a short period of time or require substantial margin payments or other payments to support.

The Commission also is proposing to amend § 1.10(c)(2)(i) to require that all monthly unaudited Forms 1–FR–FCM or FOCUS Reports be filed electronically with the Commission. The Commission also is proposing to amend § 1.10(c)(2)(i) to require an FCM to file its certified financial statement in electronic format.

FCMs currently file the monthly unaudited financial statements with the Commission using the WinJammer Online Filing System (''WinJammer'') electronic filing system, and the proposed amendments are simply codifying current practices.[29] Annual certified financial reports currently are required to be filed in paper form, and are required to contain the manual signature of the public accountant that conducted the examination. Under the Commission's proposal, an FCM will use the WinJammer system to file its certified financial report as a ''PDF'' document. The electronic filing of certified annual reports will ensure that such documents are received in a timely manner and will allow Commission staff to initiate prompt reviews of the public accountant's report to identify any accounting issues or material inadequacies that might have been identified during the examination. The

[29] WinJammer is a web-based application developed jointly by the Chicago Mercantile Exchange (''CME'') and the NFA. FCMs currently use WinJammer to transmit Forms 1–FR–FCM, FOCUS Reports, and other financial information and regulatory notices to the Commission and to the SROs.

timely review of the certified financial statements will enhance customer protections as deficiencies and other accounting issues will be promptly identified and reviewed.

The Commission also is proposing a technical amendment to § 1.10(c)(1). Regulation 1.10(c)(1) provides that any report or information required to be provided to the Commission by an IB or FCM will be considered filed when received by the Commission Regional office with jurisdiction over the state in which the FCM has its principal place of business. To ensure that reports are filed expeditiously with the correct Commission Regional office, the Commission's proposed amendment to § 1.10(c)(1) cross-references § 140.02, which sets forth the jurisdiction of each of the Commission's three Regional offices.

The Commission requests comment on all aspects the proposed amendments to § 1.10. Specifically, the Commission requests comments on the following questions:

- Should other schedules in the Form 1–FR–FCM be amended to provide additional information to the Commission and the FCM's SROs?
- The Commission is proposing to require FCMs to submit to the Commission and the firm's DSRO a monthly computation of the FCM's balance sheet leverage. The proposal is consistent with the leverage computation set forth in the rules of the NFA. Are there other measures of leverage that the Commission should consider adopting? Are there other financial statement ratios in addition to leverage that the Commission should consider requiring FCMs to submit to the Commission and DSROs?

B. Proposed § 1.11: Risk Management Program for Futures Commission Merchants

Proposed § 1.11 requires each FCM that carries customer accounts [30] to establish a risk management program designed to monitor and manage the risks associated with the FCM's activities as an FCM. It further provides: (1) That such risk management program consist of written policies and procedures; (2) that such policies and procedures be approved by the governing body of the FCM and be furnished to the Commission; and (3) that a risk management unit that is independent from the business unit be established to administer the risk management program.

Paragraph (b) of proposed § 1.11 establishes definitions for the terms ''Customer,'' ''Customer Account,'' ''Business Unit,'' ''Governing Body,'' ''Segregated Funds,'' and ''Senior Management.''

''Business Unit'' is defined to clearly delineate the separation of the risk management unit required by the proposed rule from the other personnel of an FCM.

The term ''Customer'' is defined broadly to include futures customers (as defined in § 1.3) trading futures contracts or options on futures contracts listed on designated contract markets, 30.7 Customers (as proposed to be defined in § 30.1) trading futures contract or options on futures contracts listed on foreign contract markets, and Cleared Swaps Customers (as defined in § 22.1) engaging in cleared swap transactions.

The term ''Customer Funds'' is defined to mean funds deposited by futures customers, 30.7 Customers, and Cleared Swap Customers as margin or funds accruing to such customers from open futures or cleared swap transactions. Existing Commission regulations require FCMs to hold each of these types of customer deposited funds, as applicable, in separate accounts and to segregate such Customer Funds from the FCM's own funds and from each other type.

The term ''Governing Body'' is defined as the sole proprietor, if the FCM is a sole proprietorship; a general partner, if the FCM is a partnership; the board of directors, if the FCM is a corporation; and the chief executive officer, chief financial officer, the manager, the managing member, or those members vested with the management authority if the FCM is a limited liability company or limited partnership. ''Senior Management'' is defined to mean any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the Governing Body. These definitions, as used in proposed § 1.11, are designed to ensure that there is accountability at the highest levels for the FCM's key internal controls and processes designed to protect the funds of the FCM's customers.

The term ''Segregated Funds'' is defined to mean money, securities, or other property held by a futures commission merchant in separate accounts pursuant to § 1.20 for futures customers, pursuant to § 22.2 for cleared swaps customers, and pursuant to § 30.7 for foreign futures and options customers. The definition makes clear that the requirements of § 1.11 applies to all customer funds that may be held by an FCM.

Proposed § 1.11(c)(4) requires FCMs to provide copies of the risk management policies and procedures to the Commission and the FCM's DSRO in order to allow the Commission and DSROs to monitor the status of risk management practices among FCMs. Submission of such policies and procedures to the Commission without further comment or action by the Commission or Commission staff should not be construed as an endorsement of the completeness or effectiveness of the risk management policies and procedures and no FCM should make a representation to the contrary. The Commission invites comments on the submission of risk management policies and procedures and, more generally, on whether the provisions of § 1.11 have achieved a sufficient level of detail for the purposes of designing a comprehensive risk management program.

Proposed § 1.11(e) provides for a non-exclusive list of the elements that must be a part of the risk management program of an FCM. Such policies and procedures should include: (1) identifying risks (including risks posed by affiliates, all lines of business of the FCM, and all other trading activity of the FCM) and setting of risk tolerance limits; (2) providing periodic risk exposure reports to senior management and the governing body; (3) operational risk controls; (4) capital controls; and (5) establishing a risk management program that takes into account risks associated with the safekeeping and segregation of customer funds.

In regard to customer funds, the Commission notes that FCMs are required by the Act and Commission regulations to segregate and safeguard funds deposited by customers for trading futures and/or swap contracts. Recent events have emphasized that it is essential that FCMs maintain adequate systems of internal controls, involving the participation and review of the firm's senior management, in order to properly safeguard customer funds. Accordingly, proposed § 1.11(e)(3)(i) requires that the risk management policies and procedures of an FCM related to the risks associated with safekeeping and segregation of customer funds must include: (1) The evaluation and monitoring of depositories; [31] (2)

[30] Proposed § 1.11 contains an applicability provision in paragraph (a) that makes clear that the risk management program is only required of FCMs that accept money, securities, or property to margin or secure the trades or contracts of customers transacting in futures, options on futures, and swaps.

[31] The evaluation process must include documented criteria that any depository will be assessed against in order to qualify to hold funds

account opening procedures that ensure the FCM obtains the acknowledgment required under § 1.20 from the depository and that the account is properly titled as belonging to the customers of the FCM; [32] (3) establishing and maintaining an adequate targeted amount of excess funds in customer accounts reasonably designed to ensure the FCM is at all times in compliance with the segregation requirements for customer funds under the Act and Commission regulations, as discussed further below; (4) controls ensuring that withdrawal of cash, securities, or other property from accounts holding customer funds not for the benefit of customers are in compliance with the Act and Commission regulations; [33] (5) procedures for assessing the appropriateness of investing customer funds in accordance with § 1.25; [34] (6) the valuation, marketability, and liquidity of customer funds and permitted investments made with customer funds; (7) the appropriate separation of duties of personnel responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of customer funds; [35] (8) procedures for the timely recording of transactions in the firm's books and records; and (9) annual training of personnel responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of customer funds.

Regarding the proposed requirement that FCMs establish and maintain an adequate targeted amount of excess funds in customer accounts, the Commission notes that FCMs currently deposit proprietary funds into both customer segregated accounts and Part 30 secured accounts as a buffer to minimize the possibility of the firm being in violation of its segregated and secured fund obligations at any time. Under the proposal, senior management of the FCM must perform appropriate due diligence in setting the amount of this buffer and must consider the nature of the FCM's business including the type and general creditworthiness of its customer base, the types of markets and products traded by the firm's customers, the proprietary trading activities of the FCM, the volatility and liquidity of the markets and products traded by the customers and the FCM, the FCM's own liquidity and capital needs, and historical trends in customer segregation and secured account funds balances, customer debits and margin deficits. The FCM also must reassess the adequacy of the targeted residual interest quarterly.

The Commission believes that each FCM must set the amount of excess segregated and secured funds required utilizing a quantitative and qualitative analysis that reasonably ensures compliance at all times with segregated and secured fund obligations. Such analysis must take into account the various factors that could affect segregated and secured balances, and must be sufficiently described in writing to allow the DSRO of the FCM and Commission to duplicate the calculations and test the assumptions. The analysis must provide a reasonable level of assurance that the excess is at an appropriate level for the FCM.[36] A failure to adopt or maintain appropriate risk management policies and procedures or to implement, monitor and enforce controls required by § 1.11 may result in a referral to the Commission's Division of Enforcement for appropriate action.

Finally, to ensure the effectiveness of a risk management program, § 1.11(e)(4) requires that the risk management program include a supervisory system that is reasonably designed to ensure that the risk management policies and procedures are diligently followed. Furthermore, § 1.11(f) requires an annual review and testing of the adequacy of each FCM's risk management program by internal audit staff or a qualified external, third party service.

The Commission requests comment on all aspects of proposed § 1.11. Specifically, the Commission requests comment on the following:

- Should the Commission have different risk management requirements for FCMs based upon some measureable criteria, such as size of the firm or type of customers? How would the Commission design such criteria to distinguish between firms? Which elements in proposed § 1.11 should apply to smaller FCMs vs. larger FCMs? What elements should apply to all FCMs irrespective of the size of the firm?
- Does the proposed risk management program address the appropriate minimum elements that should be covered by an FCM risk management program?
- Regulation 3.3 requires the CCO of an FCM to provide an annual report to the Commission that must review each applicable requirement under the Act and Commission regulations, and with respect to each applicable requirement, identify the policies and procedures that are reasonably designed to ensure compliance with the requirement, and provide an assessment of the effectiveness of the policies and procedures.[37] The annual report also must include a certification by the CCO that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete. The Commission requests comment on whether the standard for the CCO's certification in the annual report (*i.e.,* based upon the CCO's knowledge and reasonable belief) is adequate for a certification of the FCM's compliance with policies and procedures for the safeguarding of customer funds. Should § 1.11 contain a separate CCO certification requirement

belonging to Customers. The criteria must address a depository's capitalization, creditworthiness, operational reliability, access to liquidity. The criteria must also address risks associated with concentration of Customer funds in any depository or group of depositories, the availability of deposit insurance, and the regulation and supervision of depositories. The evaluation criteria is intended to ensure that the FCM adopts an evaluation process which reviews potential depositories against substantive criteria relevant to the safe custody of Customer funds and that the FCM's process for evaluating and selecting depositories can be reviewed by regulators and auditors. The FCM also must maintain a documented process addressing the ongoing monitoring of selected depositories, including a thorough due diligence review of each depository at least annually.

[32] As required by § 1.20, such account opening documentation is necessary to ensure that the depositories are aware of their obligations regarding the accounts and the statutory and regulatory protections afforded the funds held in the accounts due to their status as Segregated Funds.

[33] The controls must include the conditions for pre-approval and the notice to the Commission for such withdrawals required by proposed § 1.23, § 22.17, or § 30.7, discussed below.

[34] The FCM's assessment must take into consideration the market, credit, counterparty, operational, and liquidity risks associated with the investments.

[35] The policies and procedures must provide for the separation of duties among personnel that are responsible for customer trading activities, and approving and overseeing cash receipts and disbursements (including investment and treasury operations). The policies and procedures must further require that any movement of funds to affiliated companies or parties be approved and documented.

[36] Separate from requiring the establishment of a target for residual interest, the Commission is further requiring, as discussed in more detail under Sections II.G, II.H, and II.I for §§ 1.20, 1.22, and 1.23, respectively, that residual interest at all times exceed the sum of outstanding margin deficits to provide a mechanism for ensuring compliance with the prohibition of the funds of one customer being used to margin or guarantee the positions of another customer under the Act and existing regulations.

[37] Such report is mandated by § 3.3 of the Commission's regulations; *See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,* 77 FR 20128, Apr. 3, 2012 (promulgating final rules concerning the CCOs of FCMs, swap dealers, and major swap participants); *see also* § 4d(d) of the Act, 7 U.S.C. 6d(d).

that would impose a higher duty of strict liability or some other higher obligation on a CCO?

• Should the risk management program require an FCM to conduct quarterly or periodic audits to detect any breach of the policies and procedures that address the proper segregation of customer funds?

• Should the Commission establish a phased-in compliance provision for § 1.11? If so, how long of a phase-in period should be provided? Should there be different phase-in periods for different provisions of the proposed regulation?

C. Proposed Amendments to § 1.12: Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

The regulatory notices required under § 1.12 are intended to provide the Commission and SROs with prompt notice of potential adverse conditions at FCMs or IBs that may indicate or lead to a threat to the financial condition of the firm or the protection of customer funds held by the FCM. In adopting § 1.12 in 1978, the Commission stated that the establishment of an early warning system was necessary because ''[a] fundamental purpose of the Act is to protect the public from financially irresponsible FCMs who handle customer funds.'' [38]

Regulation 1.12 currently obligates FCMs and IBs to provide notice to the Commission and to the respective DSROs if certain specified reportable events occur. Reportable events include: failing to maintain the minimum level of required regulatory capital (§ 1.12 (a)); failing to maintain current books and records (§ 1.12(c)); and failing to comply with the requirements to properly segregate customer funds (§ 1.12(h)). The Commission is proposing to amend § 1.12 to include several additional reportable events and to revise the process for submitting reportable events to the Commission and DSROs.

Regulation 1.12(a) requires an FCM or IB that fails to maintain the minimum level of adjusted net capital required by § 1.17 to provide immediate notice to the Commission and to the entity's DSRO. The notice must include additional information to adequately reflect the FCM's or IB's current capital condition as of any date that the entity is undercapitalized.

The Commission is proposing to amend § 1.12(a) to explicitly provide that if the FCM or IB cannot compute or document its actual capital at the time it knows that it is undercapitalized, it must still provide the written notice required by § 1.12(a) immediately and cannot delay filing the notice until it has adequate information to compute its actual level of adjusted net capital. A purpose of the notice provision under § 1.12(a) is to provide the Commission and the DSROs with immediate notice of the undercapitalized condition of an FCM or IB. If an FCM or IB were to delay alerting the Commission that it was undercapitalized due to the fact that it could not accurately assess its capital condition, it would frustrate the intent of the notice provision. It is imperative that an FCM or IB provide immediate notice if the firm is undercapitalized. Upon the filing of a notice, Commission and SRO staff will contact the FCM or IB to obtain greater details of the financial condition of the firm, including information regarding its current financial condition or issues associated with the firm's inability to accurately determine its current financial condition.

Regulation 1.12(h) currently requires an FCM that fails to hold sufficient funds in segregated accounts to meet its obligations to futures customers, or that fails to hold sufficient funds in separate accounts for foreign futures or foreign options customers, to provide immediate notice to the Commission and to the FCM's DSRO. The Commission is proposing to amend paragraph (h) to include an explicit requirement that an FCM provide immediate notice to the Commission and to its DSRO if the FCM fails to hold sufficient funds in segregated accounts for Cleared Swaps Customers to meet its obligation to such customers.

Commencing November 8, 2012, the compliance date for certain Commission Part 22 regulations, FCMs will be required under § 22.2 to hold a sufficient amount of funds in Cleared Swaps Customer Accounts to meet the Net Liquidating Equity of each Cleared Swaps Customer.[39] Immediate notification of a failure to hold sufficient funds in segregation for Cleared Swaps Customers is essential for the Commission and DSROs to promptly assess the financial condition of an FCM and to determine if there are threats to the safety of the Cleared Swaps Customers' funds held by the FCM. The proposed amendment to § 1.12(h) also harmonizes the notice requirements whenever an FCM fails to hold sufficient funds for futures customers, 30.7 Customers, and Cleared Swaps Customers.

The Commission also is proposing to amend § 1.12 by adding new paragraph (i) to require an FCM to provide notice whenever it discovers or is informed that it has invested funds held for customers in investments that are not permitted investments under § 1.25, or if the FCM holds permitted investments in a manner that is not in compliance with the provisions of § 1.25 (such as the investment concentration limits). The proposal will apply to funds held for futures customers, 30.7 Customers, and Cleared Swaps Customers.

The protection of customer funds is a core element of the Commission's regulatory program. FCMs are entrusted with a responsibility to use customer funds only for the benefit of the depositing customers.[40] FCMs are permitted, however, to invest customer funds pursuant to the standards and conditions set forth in § 1.25. Regulation 1.25 contains a list of permitted investments and other criteria that are intended to allow an FCM to receive the benefit of investing customer funds while also preserving the principal and maintaining the liquidity of the customer funds.

Requiring an FCM to provide prompt notice of a § 1.25 violation will allow Commission and DSRO staff to assess whether customer funds are endangered and to work with the FCM to ensure that the impermissible investments are appropriately liquidated and customer funds remain intact. Commission and DSRO staff also will benefit from receiving notices of § 1.25 violations in that the notices will provide information regarding new investments that FCMs may engage in that are not permitted investments under § 1.25. Such information will be helpful for the Commission and DSRO in conducting reviews of other FCMs and in providing regulatory updates to the industry.[41]

The Commission also is proposing to amend § 1.12 to provide a new paragraph (j) that will require an FCM to provide immediate notice to the Commission and to the firm's DSRO if the FCM does not hold an amount of funds in segregated accounts for futures customers or for Cleared Swaps Customers, or if the FCM does not hold sufficient funds in separate accounts for 30.7 Customers, sufficient to meet the firm's targeted residual interest in one or more of these accounts as computed

[38] 43 FR 39956, 39967 (Sept. 8, 1978).

[39] 77 FR 6336 (Feb. 7, 2012).

[40] Regulation 1.20(a), 17 CFR 1.20(a).

[41] The Commission further notes that investing customer funds in investments that are not permitted investments under § 1.25, or holding investments in a manner that is otherwise not compliant with § 1.25 does not change the legal status of the funds as customer funds in the event of the bankruptcy of the FCM.

under proposed § 1.11, or if its residual interest in one or more of these accounts is less than the sum of outstanding margin deficits for such accounts. Proposed § 1.11 will require each FCM that carries customer funds to calculate an appropriate amount of excess funds (*i.e.,* proprietary funds) to hold in segregated or secured accounts to mitigate the FCM from being undersegregated or undersecured due to a withdrawal of proprietary funds from a segregated or secured account. The fact that an FCM is not holding a sufficient amount of excess funds in customer accounts to meet its targeted residual interest may be indicative of more severe financial or operational issues at the firm. In addition, if an FCM's residual interest is less than the sum of outstanding margin deficits in one such account, it is possible that funds of one customer in such account are at risk of margining or guaranteeing the open positions of another customer. Accordingly, the Commission is proposing to require an FCM to file immediate notice of such an event to allow Commission and DSRO staff to contact the FCM to assess the condition of the firm and the safety of customer funds.

The Commission also is proposing new paragraphs (k) and (l) for § 1.12. Paragraphs (k) and (l) will require an FCM to provide notice to the Commission and to the firm's DSRO in the event of a material adverse impact in the financial condition of the firm or a material change in the firm's operations. Proposed paragraph (k) will require an FCM to provide immediate notice if the FCM, its parent, or a material affiliate, experiences a material adverse impact to its creditworthiness or its ability to fund its obligations. Indications of a material adverse impact of an FCM's creditworthiness may include a bank or other financing entity withdrawing credit facilities, a credit rating downgrade, or the FCM being placed on ''credit watch'' by a credit rating agency. Proposed paragraph (l) will require an FCM to provide immediate notice of material changes in the operations of the firm, including: A change in senior management; the establishment or termination of a material line of business; a material change in the FCM's clearing arrangements; or a material change in the FCM's credit arrangements. Paragraph (l) is intended to provide the Commission with notice of material events, such as the departure of the FCM's CCO, CFO, or CEO.

As noted above, § 1.12 is intended to provide the Commission and DSROs with notice of potential issues that may impact the financial condition of an FCM or the safety of customer funds. The regulatory objective is for FCMs to provide material information to the Commission and DSROs as early as possible so that the Commission and DSROs can assess the information and communicate with the FCMs prior to a more serious issue developing that may impair the financial condition of the firms or the safety of customer funds. Proposed paragraphs (k) and (l) will provide the Commission and DSROs with notice of major events that will initiate a dialogue between the Commission, DSROs, and FCMs which will have the benefit of informing the Commission and DSROs of material events impacting FCMs. Such information would be used by the Commission and DSROs in setting the scope of the review and monitoring of the FCMs, including the determination of the risk of the firms for purposes of scheduling future examinations. Without paragraphs (k) and (l), the Commission and DSROs may not learn of material events at FCMs until the firms are subject to periodic examinations.

The Commission is proposing to add a new paragraph (m) to § 1.12 that will require an FCM that receives a notice, examination report, or any other correspondence from the SEC or a SRO to file a copy of such notice, examination report, or correspondence with the Commission. In order to perform comprehensive oversight of an FCM, the Commission and the DSROs need to receive prompt notice of any concern or adverse action taken by the SEC or a securities SRO. The protection of futures customers funds are not immune from issues that arise from the securities operations or business of a dual registrant FCM/BD. Requiring an FCM to provide prompt notice to the Commission and the firm's DSRO of any notice, examination report, or correspondence that the firm receives from the SEC or a securities SRO will allow the Commission and the DSRO to identify potential threats to the safety of customer funds.

The Commission is further proposing to amend the process that an FCM uses to file the notices required by § 1.12. Currently, § 1.12 requires an FCM to provide the Commission and DSROs with telephonic and facsimile notice in some situations, and to provide written notice by mail in other situations. An FCM also is permitted, but not required, to file notices and written reports with the Commission and with its DSRO using an electronic filing system in accordance with instructions issued by or approved by the Commission.

The Commission is proposing to amend § 1.12(n) to require that all notices and reports filed by an FCM with the Commission or with the FCM's DSRO must be in writing and submitted using an electronic filing system. Each FCM currently uses WinJammer to file regulatory notices with the Commission and with the firm's DSRO. The WinJammer system provides for the most effective mechanism for ensuring that regulatory notices are promptly received by the Commission and by the DSROs.[42] The regulation further provides that if the FCM cannot file a notice due to the electronic system being inoperable or for any other reason, it must contact the Commission Regional office with jurisdiction over the firm and make arrangements for the filing of the regulatory notices by filing the notice with the Commission via electronic mail at a specially designated email address established by the Commission; *fcmnotices@cftc.gov.* The Commission also is proposing to amend § 1.12(n) to require that each notice filed by an FCM, IB, or SRO under § 1.12 must include a discussion of what caused the reportable event, and what steps have been, or are being taken, to address the reportable event. The reporting entity, however, may not delay the reporting of a reportable event if it does not possess complete information on what caused the event, or the steps that have been taken or are being taken to address the event.

The amendments to §§ 1.12(b), (d), (e), (f) and (g) are necessary and technical in nature, and primarily revise internal cross-references to the filing requirements in § 1.12(n).

The Commission request comment on all aspects of the proposed amendments to § 1.12. Specifically, the Commission requests comment on the following:

- Are there other reportable events that the Commission should consider adding to § 1.12 that would benefit the Commission and the DSROs in the monitoring of the financial and operating conditions of FCMs?
- Should the Commission consider removing any of the reportable events listed in § 1.12? If so, why?
- Should any of the reportable events be made public by the Commission, SROs, or FCMs? If so, which reportable events? What benefit would the public receive from the disclosure of the reportable events? What would be the costs of disclosing the reportable events to the FCMs? Are there any negative

[42] The Commission's proposed amendment to require the electronic filing of reports applies to both registered FCMs and applicants for registration as FCMs. Applicants for FCM registration currently file regulatory notices with NFA using WinJammer.

impacts of disclosing the reportable events?

• Are the reporting standards in proposed paragraphs (k) and (l) adequately detailed and objective so that an FCM can determine when there is a reportable event? If not, what standards should the Commission use to define a reportable event under paragraphs (k) and (l)?

D. Proposed Amendments to § 1.15: Risk Assessment Reporting Requirement for Futures Commission Merchants

Regulation 1.15 requires FCMs to submit certain risk assessment reports to the Commission. The risk assessment filings include FCM organizational charts; financial, operational, risk management policies, and systems maintained by the FCM; and fiscal year-end consolidated and consolidating financial information for the FCM and its highest level material affiliate.

The Commission is proposing to amend § 1.15(a)(4) to require each FCM that is subject to § 1.15 to submit its risk assessment information to the Commission electronically in accordance with instructions issued by the Commission. The Commission intends for FCMs to file the risk assessment materials using the WinJammer electronic filing system. The Commission requests comments on its proposed amendments to § 1.15.

E. Proposed Amendments to § 1.16: Qualifications and Reports of Accountants

Regulation 1.16 sets forth the qualifications a public accountant must possess in order to conduct audits of Commission registrants. Currently, a public accountant must be registered and in good standing under the laws of the place of the public accountant's principal office in order to conduct examinations of FCMs.

The Commission is proposing to amend § 1.16(b)(1) to require that the public accountant be registered with the Public Company Accounting Oversight Board (''PCAOB'') in addition to being in good standing with the relevant state licensing authorities. In addition, the public accountant must have undergone an examination by the PCAOB and any deficiencies noted during such examination must have been remediated to the satisfaction of the PCAOB. Regulation § 1.16(b)(4) also will impose an obligation on an FCM's governing body to ensure that a public accountant is qualified to perform an audit of the FCM by assessing the firm's experience in auditing FCMs, the firm's experience and knowledge of the Act and Commission regulations, and the depth and experience of the firm's auditing staff.

The Commission also is proposing to amend § 1.16(c)(2) to require a public accountant to state in the audit opinion whether the audit was conducted in accordance with U.S. GAAS after full consideration of the auditing standards adopted by the PCAOB. Currently, all audits of the certified financial statements of FCMs must be performed under U.S. GAAS. However, as the Commission is now proposing that certified public accountants must be registered with the PCAOB, it is necessary to also require that the auditing standards promulgated by the PCAOB be considered and adhered to where applicable. PCAOB requires auditors opining on a public company financial statements to comply with all applicable auditing standards, including PCAOB standards; whereas U.S. GAAS is required for the audits of non-public companies.

In 2003, the PCAOB adopted existing U.S. GAAS as interim standards, subject to periodic revision as the PCAOB deemed necessary. Since that time, the PCAOB has issued its own auditing standards in areas of the audit in which differentiated audit procedures or reporting requirements have been considered necessary. These areas largely pertain to audits of internal control over financial reporting as well as reports on those controls, audit documentation and engagement quality review. Generally speaking, the most significant difference between U.S. GAAS and PCAOB standards relates to the auditor's testing of internal controls over financial reporting which are meant to cover the auditor's opinion on the Sarbanes-Oxley Act Section 404 report on internal controls. From a regulatory perspective, an auditor's focus on internal controls is critical to helping to ensure that material errors in financial or regulatory reporting are identified on a timely basis, and the PCAOB standards provide more focus on the auditing standards in this regard. It should also be noted that auditors of BDs are now required to register with the PCAOB and follow PCAOB standards; thus, any dually-registered FCM/BDs will already have to comply with this requirement.

The proposed amendments to §§ 1.16(b)(1) and (c)(2) are designed to reasonably ensure the quality and competence of public accountants that engage in the audits of FCMs. FCMs are sophisticated financial market participants that are subject to extensive regulation. In addition, the complexity of FCM audits is increased substantially when a firm is engaged in proprietary trading or dually-registered as an FCM/BD. Public accountants must be knowledgeable regarding the business operations, regulatory obligations and financial reporting requirements for FCMs, and the governing body of the FCM must ensure that the public accountant has the knowledge, experience, and resources to conduct the audits. Also, requiring the public accountant to be registered with PCAOB will ensure that the public accountant is subject to periodic reviews to assess its compliance with industry standards.

While the Commission does not expect the proposed PCAOB registration requirement to have a material impact on FCMs, it recognizes that not all FCMs currently use CPAs that are registered with the PCAOB or CPAs that have been subject to an examination by the PCAOB. Currently, 111 of the 116 FCMs are examined by CPAs that are registered with the PCAOB. Also, 12 CPAs that are registered with the PCAOB have not yet been subject to a PCAOB examination. These 12 CPAs conduct examinations of 20 FCMs. Therefore, currently 25 of the 116 FCMs would not satisfy the proposed requirement that only PCAOB-registered CPAs that have been subject to at least one PCAOB review may be engaged to conduct an examination of the FCM's financial statements.[43]

The Commission is proposing a technical amendment to § 1.16 to revise the definition of the term ''customer.'' Regulation 1.16 details the standards that a public accountant must meet in conducting a financial examination of an FCM. Currently, § 1.16(a)(4) defines the term ''customer'' to include futures customers, Cleared Swaps Customers, and foreign futures or foreign options customers. The Commission is proposing to amend § 1.16(a)(4) to revise the definition of customer to replace the term ''foreign futures or foreign options customer'' with the term ''30.7 Customer'' to make the provision consistent with the amendments contained in Part 30 of the Commission's regulations.

The Commission also is proposing to amend paragraph (f)(1)(i)(C) of § 1.16 to provide that any filing of a notice of the extension of time to file the audited financial reports must be submitted by the FCM to the Commission using an electronic filing system. The Commission intends for FCMs to use the WinJammer electronic filing system.

[43] The Commission further notes, however, that 7 of the 20 FCMs are audited by a PCAOB-registered CPA that also conducts audits of BDs or public companies and, therefore, will be subject to PCAOB examination at a future date.

The Commission also is proposing to remove the requirement from § 1.16(c)(1) that annual financial reports contain the manual signature of the public accountant. Under the proposed amendments to § 1.10 discussed above, FCMs will be filing annual financial reports electronically, which will preclude the use of manual signature.

The Commission requests comment on all aspects of proposed § 1.16. Specifically, the Commission request comment on the following:

- A purpose of the requirement that FCMs engage only CPAs that are registered with the PCAOB and have been reviewed by the PCAOB is to enhance the quality of the audit examination conducted by CPAs. Does the PCAOB registration and examination process enhance the quality of FCM audit engagements?
- Are there viable alternatives that the Commission should consider to enhance the quality of CPA FCM examinations in lieu of PCAOB registration and examination?
- Should the Commission consider allowing the non-PCAOB registered CPAs or PCAOB-registered CPAs that have not been subject to a PCAOB review to contractually engage for a peer review from a qualified CPA who is aware of the reason for the peer review as a short-term measure to allow the non-compliant CPAs to continue to conduct audits of FCMs?
- If the Commission adopts the PCAOB registration and examination requirement, how should the Commission implement the effective or compliance dates? What factors should the Commission consider in setting an effective date or compliance date for this provision?

F. Proposed Amendments to § 1.17: Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

The Commission is proposing to amend § 1.17 by adding a new provision that will authorize the Commission to require an FCM to transfer its customer business and cease operating as an FCM if the FCM cannot immediately certify to the Commission, and demonstrate with verifiable evidence, that the FCM has sufficient access to liquidity to continue operating as a going concern. The Commission also is proposing to amend § 1.17 to permit an FCM that is not a dually-registered FCM/BD to develop the framework proposed by the SEC, as set forth below, to establish, maintain and enforce written policies and procedures for determining creditworthiness, and upon a determination that a particular type of security has minimal credit risk, to apply lower deductions to such securities in computing the FCM's adjusted net capital.

Section 4f(b) of the Act provides that no person may be registered as an FCM unless such person meets the minimum financial requirements that the Commission has established by regulation to ensure that an FCM meets its obligations at all times as an FCM to its customer and to market participants, including DCOs. The Commission's minimum capital requirements for FCMs are set forth in § 1.17 and generally require an FCM to maintain adjusted net capital equal to or in excess of the greater of: $1 million; 8 percent of the risk maintenance margin required on customer and non-customer futures and options on futures positions carried by the FCM; [44] the amount of adjusted net capital required by the NFA; or, for dual-registrants, the amount of net capital required by the SEC. The term ''adjusted net capital'' is generally defined as the FCM's net, liquid assets less all of the FCM's liabilities (except certain qualifying subordinated debt). In computing its adjusted net capital, an FCM is required to reduce the value of proprietary futures and securities positions included in its liquid assets by certain prescribed amounts or percentages of the market value (otherwise known as ''haircuts'') to discount for potential adverse market movements in the securities.

Commission Regulation 1.17(a)(4) currently provides that an FCM must cease operating as an FCM and transfer its customers positions to another FCM if the FCM is not in compliance with the minimum capital requirements, or is unable to demonstrate its compliance with the minimum capital requirements. The FCM, however, can initiate customer trades for liquidation purposes only. Regulation 1.17(a)(4) further provides that the Commission or the FCM's DSRO may grant the FCM up to a maximum of 10 days to come back into compliance with the minimum capital requirements without having to cease operating as an FCM or transferring customer accounts.

The Commission is proposing to add an additional clause to § 1.17(a)(4), which will specify that the Commission may request certification in writing from an FCM that it has sufficient liquidity to continue operating as a going concern, and that if such certification is not provided immediately or the FCM is not able to demonstrate its access to liquidity with verifiable evidence, the FCM must transfer all customer accounts and immediately cease doing business as an FCM. The proposed liquidity provision is intended to cover circumstances that require immediate attention. The proposal is not intended to provide a mechanism for the Commission to require FCMs to demonstrate that they are a going concern for an extended period of time into the future. Rather, the purpose of the proposal is to provide the Commission with a means of addressing exigent circumstances by requiring an FCM to produce a written analysis showing the sources and uses of funds over a short period of time not to exceed one week.

The Commission believes this clause provides additional protection to customers in the event of an imminent liquidity drain on a registrant, which may not be immediately reflected in its accounting or regulatory capital business records. Market events or other external indicators may come to the attention of the Commission which suggest an FCM is under severe liquidity stress, which demonstrates that although the firm is still able to demonstrate compliance with required regulatory capital, conditions are such that it will not be able to meet liquidity requirements out a period of time not to exceed one week. This provision will allow the Commission to essentially require an FCM on demand to be able to certify its access to liquidity sufficient to continue operating as a going concern for a period not to exceed one week. The inability of the FCM to satisfy this requirement will allow the Commission to direct the FCM to transfer customer accounts and cease doing business as an FCM.

The Commission believes the ability to certify, and if requested, demonstrate with verifiable evidence, sufficient liquidity to operate as a going concern to meet immediate financial obligations, is a minimum financial requirement necessary to ensure an FCM will continue to meet its obligations as a registrant as set forth under § 4(f)(b) of the Act. The certification required must satisfy the same oath or affirmation requirements as those required for the submission of monthly financial reports under § 1.10(d)(4), to ensure that it is made by an appropriate individual and that it is in writing under oath of the individual that it is true and correct to the best knowledge and belief of such individual. If a registrant certifies to the Commission its access to liquidity, but is not able to demonstrate with sufficient evidence such liquidity (for example such evidence may include confirmations by third parties of access

[44] The term ''noncustomer'' is generally defined under § 1.17 as affiliates or management of an FCM.

to credit lines with available credit or of unrestricted cash balances available to meet projected short term cash requirements), the Commission believes it would be prudent to require the registrant to transfer customer accounts. Circumstances related to a liquidity drain could also result in a breakdown of management controls and result in an erroneous or false certification, and in such circumstances, the protection of customers must be paramount. The Commission requests comment on the proposed additional clause to § 1.17(a)(4).

Regulation 1.17 further requires an FCM to take a haircut against the value of securities the FCM holds as investments of customer funds under § 1.25. A primary purpose of these haircuts is to provide a margin of safety against losses that might be incurred by the FCM as a result of market fluctuations in the prices of, or lack of liquidity in, the security positions.

For futures positions, an FCM that is a member of the clearing organization where the positions are cleared is required to take a haircut equal to the margin required by the clearing organization on such futures positions.[45] For securities positions, § 1.17 incorporates by reference the securities haircuts that a BD is required to take in computing its net capital under the SEC's regulations.[46] The structure of the Commission's net capital rule referring to the SEC's net capital rule is a result of the Commission's determination to defer to the SEC in areas of its expertise, specifically with respect to market risk and appropriate haircuts on securities positions.[47]

The SEC capital rule currently applies a general or ''default'' haircut of 15 percent of the market value of commercial paper, convertible debt instruments, and nonconvertible debt instruments if the securities are readily marketable, and 100 percent of the market value if the securities are not readily marketable. The SEC capital rule also provides for a lower haircut for commercial paper, convertible debt instruments, and nonconvertible debt instruments if the securities are rated in higher rating categories by at least two nationally recognized statistical rating organizations (''NRSROs''). To receive the benefit of a reduced haircut on commercial paper, the commercial paper must be rated in one of the three highest rating categories by at least two NRSROs. To receive the benefit of a reduced haircut on a nonconvertible debt security or a convertible debt security, the security must be rated in one of the four highest rating categories by at least two NRSROs.

The SEC has proposed rule amendments to implement the Dodd-Frank Act requirement to remove references to credit ratings in its regulations and substitute a standard for creditworthiness deemed appropriate, including a proposed amendment to its net capital rule for BDs at 17 CFR 240.15c3–1.[48] Under the SEC proposal, a BD may impose the default haircuts of 15 percent of the market value of readily marketable commercial paper, convertible debt, and nonconvertible debt instruments or 100 percent of the market value of nonmarketable commercial paper, convertible debt, and nonconvertible debt instruments. A BD, however, may impose lower haircut percentages for commercial paper, convertible debt, and nonconvertible debt instruments that are readily marketable, if the BD determines that the investments have only a minimal amount of credit risk pursuant to its written policies and procedures designed to assess the credit and liquidity risks applicable to a security.

Under the SEC proposal, the BD's written policies and procedures may assess a security's credit risk using the following factors, to the extent appropriate, instead of exclusively relying on NRSROs ratings:

- Credit spreads (*i.e.,* whether it is possible to demonstrate that a position in commercial paper, nonconvertible debt, and preferred stock is subject to a minimal amount of credit risk based on the spread between the security's yield and the yield of Treasury or other securities, or based on credit default swap spreads that reference the security);
- Securities-related research (*i.e.,* whether providers of securities-related research believe the issuer of the security will be able to meet its financial commitments, generally, or specifically, with respect to securities held by the broker-dealer);
- Internal or external credit risk assessments (*i.e.,* whether credit assessments developed internally by the broker-dealer or externally by a credit rating agency, irrespective of its status as an NRSRO, express a view as to the credit risk associated with a particular security);
- Default statistics (*i.e.,* whether providers of credit information relating to securities express a view that specific securities have a probability of default consistent with other securities with a minimal amount of credit risk);
- Inclusion on an index (*i.e.,* whether a security, or issuer of the security, is included as a component of a recognized index of instruments that are subject to a minimal amount of credit risk);
- Priorities and enhancements (*i.e.,* the extent to which a security is covered by credit enhancements, such as overcollateralization and reserve accounts, or has priority under applicable bankruptcy or creditors' rights provisions);
- Price, yield and/or volume (*i.e.,* whether the price and yield of a security or a credit default swap that references the security are consistent with other securities that the broker-dealer has determined are subject to a minimal amount of credit risk and whether the price resulted from active trading); and
- Asset class-specific factors (*e.g.,* in the case of structured finance products, the quality of the underlying assets).

A BD that maintains written policies and procedures and determines that the credit risk of a security is minimal is permitted under the SEC proposal to apply the lesser haircut requirement currently specified in the SEC capital rule for commercial paper (*i.e.,* between zero and ½ of 1 percent), nonconvertible debt (*i.e.,* between 2 percent and 9 percent), and preferred stock (*i.e.,* 10 percent).

For FCMs that are dually-registered as BDs, any changes adopted by the SEC to these securities haircuts will be applicable under § 1.17(c)(5)(v) unless the Commission specifically provides an alternate treatment for FCMs.[49] However, FCMs that are not dual registrants would be required to take the default haircuts of 15 percent for readily marketable securities. The Commission does not believe that it is appropriate to exclude standalone FCMs from using an internal process to assess the credit risk of certain securities. Therefore, the Commission's proposed amendment to § 1.17(c)(v) will permit an FCM that is not a BD to develop the framework proposed by the SEC to establish, maintain and enforce written policies and procedures for determining creditworthiness, and upon a determination that a particular type of security has minimal credit risk, to apply lower deductions to such

[45] *See* § 1.17(c)(5)(x)(A).

[46] Commission Regulations 1.17(c)(5)(v) and 1.32(b) both incorporate 17 CFR 240.15c3–1(c)(2)(vi) by reference.

[47] *See* 43 FR 15072 (Apr. 10, 1978) at 15077 and 43 FR 39956 (Sept. 8, 1978) at 39963.

[48] *See* 76 FR 26550 (May 6, 2011).

[49] See discussion adopting § 1.17(c)(5)(vi) for options haircuts at 43 FR 39956 at 39964, with respect to the applicability of provisions incorporating by reference and referring to the rules of the SEC for securities broker dealers also registered as futures commission merchants.

securities. An FCM will be required to maintain its written policies and procedures in accordance with the general recordkeeping requirements of § 1.31, and the implementation of the policies and procedures will be subject to review by the FCM's DSRO. An FCM that elects to develop written policies and procedures will be subject to review by its DSRO.

Regulation 1.17 also requires an FCM to reduce its capital (*i.e.,* take a capital charge) for customer, noncustomer, and omnibus accounts that are undermargined for more than a specified period of time. Regulation 1.17(c)(5)(viii) requires an FCM to take a capital charge if a customer account is undermargined for three business days after the margin call is issued. The capital charge is equal to the amount of funds necessary to restore the account to the initial margin requirement.

Regulation 1.17(c)(5)(ix) requires an FCM to take a capital charge for noncustomer and omnibus accounts that are undermargined for two business days after the margin call is issued. The capital requirement for undermargined noncustomer and omnibus accounts is the amount of funds necessary to restore the account to the maintenance margin level.

For purposes of these Commission regulations, a margin call is presumed to be issued by the FCM the day after an account becomes undermargined. Thus, if a customer's account is undermargined at the close of business on Monday, the FCM will issue a margin call on Tuesday, and the regulation requires the FCM to take an undermargined capital charge at the close of business on Friday if the margin call is not met. For noncustomer and omnibus accounts that were undermargined at the close of business on Monday, the FCM would take a capital charge as of the close of business on Thursday.

The Commission is proposing to amend §§ 1.17(c)(5)(viii) and (ix) to require an FCM to take capital charges for undermargined customer, noncustomer, and omnibus account that are undermargined for more than one business day after a margin call is issued. Therefore, an FCM will impose a capital charge as of the close of business on Wednesday for any customer, noncustomer, or omnibus account that did not fully satisfy a margin call that is issued by the FCM on Tuesday for an account that was undermargined as of the close of business on Monday.

The timely collection of margin is a critical component of an FCM's risk management program and is intended to ensure that an FCM holds sufficient funds deposited by account owners to meet potential obligations to a DCO. As guarantor of the financial performance of the customer, noncustomer, and omnibus accounts that it carries, the FCM is financially responsible if the owner of an account cannot meet its margin obligations to the FCM and ultimately to a DCO. The timeframe for meeting margin calls currently provided in §§ 1.17(c)(5)(viii) and (ix) may have been appropriate when the capital rules were adopted in the 1970s when the use of checks and the mail system were more prevalent for depositing margin with an FCM. The Commission believes, however, that in today's markets, with the increasing use of technology, 24-hour-a-day trading, and the use of wire transfers to meet margin obligations, that the timeframe for taking a capital charge should be reduced both to incentivize FCMs to exercise prudent risk management and to strengthen the financial protection of FCMs, their customers, and the clearing systems by requiring the FCMs to reserve capital for undermargined customer, noncustomer, and omnibus accounts that fail to meet a margin call on a timely basis.

The Commission also is proposing, as discussed in Section II.I below, to require an FCM to maintain a residual interest in customer segregated accounts in an amount sufficient to cover all customer accounts that are undermargined as of the close of business on the previous trading day, thereby ensuring that residual interest in customer segregated accounts exceeds the sum of outstanding margin calls for customers, and that the funds of one customer are not used to margin or guarantee the positions of another customer. The FCM may only maintain as residual interest cash and assets that qualify as permitted investments under § 1.25. Margin deficits will be calculated as enough to restore the customer's account equity to the maintenance margin requirement on the account.

The Commission also is proposing technical amendments to certain definitions in § 1.17 to reflect proposed changes discussed in Section II.R below concerning the § 30.7 secured amount calculation. The § 1.17(b)(2) and (7) definitions of the terms ''customer'' and ''customer account'' are being proposed to be amended, the first to include ''30.7 Customer'' (which is a new definition being proposed in § 30.1 to include foreign domiciled persons) and the second to remove surplus language due to the revised definition of ''customer.''

The Commission requests comment on the proposed amendments to § 1.17. Specifically, the Commission requests comment on the following:

- Does the proposed amendment to require an FCM to certify that it has sufficient liquidity to operate as a going concern provide a sufficient and objective standard for FCMs to assess whether they are in compliance with the provision? Are there alternative standards or approaches that the Commission should consider to meet its objective of ensuring that an FCM has sufficient liquidity to meet its pending short-term obligations so that customer funds would not be put at risk in the event of the insolvency of the FCM?
- Should the Commission consider alternative timeframes for the imposition of a capital charge for undermargined accounts?

G. Proposed Amendments to § 1.20: Futures Customer Funds To Be Segregated and Separately Accounted for

The Commission is proposing to reorganize the structure of § 1.20 by providing additional paragraph subdivisions to the existing specific requirements, applying headings to the regulation to assist in the reading and understanding of the regulation. The Commission also is proposing to add new provisions designed to enhance the protection of customer funds.

Regulation 1.20 implements the provisions of section 4d(a)(2) of the Act, which provides, in relevant part, that an FCM must: (1) Separately account for all futures customer funds and segregate such funds as belonging to its futures customers; (2) not commingle futures customer funds with the FCM's proprietary funds; (3) not use the funds of one futures customer to margin or extend credit to any person other than to the futures customer that deposited the funds; and (4) deposit futures customer funds in any bank, trust company or DCO.

Paragraph (a) of § 1.20 sets forth the general principle under section 4d(a)(2) of the Act by requiring an FCM to separately account for all futures customer funds and to segregate such funds from the FCM's proprietary funds by depositing them under an account name that clearly shows that the funds are futures customer funds and segregated as required by the Act. Paragraph (g)(1) applies the same general principle to futures customer funds received by a DCO from its members.

Paragraph (a) also requires each FCM to perform appropriate due diligence on all depositories in accordance with its risk management policies and procedures required under proposed

§ 1.11 to ensure that the depositories holding customer funds are financially sound. The FCM must annually update its due diligence.

Paragraph (a) of § 1.20 also provides that an FCM must be in compliance with its segregation obligations at all times. It is not sufficient for an FCM to be in compliance at the end of a business day, but to fail to meet its segregation obligations on an intra-day basis. If an FCM was not in compliance with the segregation requirements on an intra-day basis that would necessarily mean that the FCM was using the funds of one customer to margin positions of another customer or to cover losses of another customer.

Paragraph (b) of § 1.20 lists the permitted depositories for futures customer funds as any bank, trust company, derivatives clearing organization, or another FCM. These permitted depositories are listed in existing § 1.20 and the Commission is not proposing to amend the list. Proposed paragraph (g)(2) lists the permitted depositories for futures funds received by a DCO as any bank or trust company, and clarifies that the term ''bank'' includes a Federal Reserve Bank. This proposed amendment implements section 806(a) of the Dodd-Frank Act, which provides that a Federal Reserve Bank may establish and maintain a deposit account for a ''financial market utility'' (in the present case, a DCO) that has been designated as systemically important.

Paragraph (c) provides that an FCM may hold futures customer funds in depositories outside of the United States only in accordance with the current provisions of § 1.49. Paragraph (g)(3) sets forth the same limitation for a DCO. Regulation 1.49 currently permits an FCM or DCO to hold futures customer funds in certain foreign depositories provided that the FCM or DCO holds sufficient funds in the United States to meet its U.S. dollar-denominated obligations to futures customers. Regulation 1.49 also requires specific futures customer authorization for an FCM or DCO to hold futures customer funds in certain foreign jurisdictions. The Commission is not proposing to amend § 1.49 as part of this rulemaking.

Proposed § 1.20(e) prohibits an FCM from commingling futures customer funds with the FCM's proprietary funds, and prohibits the FCM from commingling funds deposited by futures customers with funds deposited by 30.7 Customers or Cleared Swaps Customers. Regulation 1.20(e), however, does permit an FCM to commingle the funds of multiple futures customers in a single account or accounts for operational convenience. Similarly, proposed § 1.20(g)(5) prohibits a DCO from commingling futures customer funds with the DCO's proprietary funds or with any proprietary account of any of its clearing members, and prohibits the DCO from commingling funds held for futures customers with funds deposited by clearing members on behalf of their Cleared Swaps Customers. DCOs would be permitted to commingle the funds of multiple futures customers in a single account or accounts for operational convenience.

Proposed § 1.20(f) restricts an FCM's use of customer funds. An FCM is prohibited from using one futures customer's funds to margin or secure another futures customer's positions. An FCM also is prohibited from using a futures customer's funds to extend credit to any other person. The FCM also may obligate futures customers' funds to a DCO or another FCM solely to purchase, margin, or guarantee futures and options positions of futures customers.

The Commission is proposing a new paragraph (h) which states that all futures customer funds deposited with a bank or trust company must be available for immediate withdrawal upon demand by the FCM or DCO. Paragraph (h) codifies a long-standing interpretation of the Commission's Division of Swap Dealer and Intermediary Oversight and predecessor divisions derived from an administration determination by the Commission's predecessor, the Commodity Exchange Authority of the U.S. Department of Agriculture.[50] The requirement, as proposed, is a practical necessity to the effective functioning of FCMs and futures markets. Should a depository have the ability to delay an FCM from withdrawing customer funds, the FCM may not be able to meet margin obligations to DCOs, or requests by futures customers for access to their funds. In addition, an inability of an FCM to have immediate access to the futures customer funds that it holds may adversely impact the transfer of futures customers positions in the event of the FCM's insolvency.[51]

[50] *See* Administrative Determination No. 29 of the Commodity Exchange Administration dated Sept. 28, 1937 stating, ''the deposit, by a futures commission merchant, of customers' funds * * * under conditions whereby such funds would not be subject to withdrawal upon demand would be repugnant to the spirit and purpose of the Commodity Exchange Act. All funds deposited in a bank should in all cases by subject to withdrawal on demand.''

[51] In the case of the bankruptcy of Lehman Brothers, for example, immediate access to customer funds allowed the commodity customer accounts to be effectively transferred to Barclays over the weekend of September 20–21, 2008, immediately following the commencement of the liquidation of the firm. This transfer was authorized in the hours immediately following the commencement of Lehman's liquidation, and was implemented in the hours immediately thereafter.

- The Commission is proposing a new paragraph (i), which mirrors what was recently adopted in Part 22 for Cleared Swaps Customers, by providing more detail implementing the Net Liquidating Equity Method of calculating segregation requirements. In addition, because a customer may have Net Liquidating Equity (*i.e.,* a credit balance) in his or her account, requiring segregation of his or her funds, and still be undermargined relative to open positions, proposed paragraph (i) requires an FCM to record in the accounts of its futures customers the amount of margin required for such customers' open positions, and to calculate margin deficits for each such customer. Moreover, the Commission is proposing to require that an FCM maintain residual interest in segregated accounts in an amount that exceeds the sum of all futures customers' margin deficits. A margin deficit occurs when the value of the futures customer funds for a futures customer's account is less than the total amount of collateral required by DCOs for that account's contracts. Currently, the Commission requires FCMs to hold sufficient funds in segregated futures customer accounts to ensure that those accounts do not become undersegregated. Proposed new paragraph (i) will affirmatively require an FCM to maintain enough funds in the futures customer accounts to cover all margin deficits as well as to ensure that the accounts are not undersegregated. The Commission requests comments on all aspects of proposed new § 1.20(i), including the costs and benefits of this proposed regulation. The Commission specifically requests comment on the following:
- Will this proposal serve to increase the protections to customer funds in the event of an FCM bankruptcy?
- To what extent would this proposal increase costs to FCMs and/or futures customers?
- To what extent would this proposal benefit futures customers and/or FCMs?
- To what extent would this proposal increase or mitigate market risk?
- To what extent would this proposal lead to FCMs requiring customers to provide margin for their trades before placing them?
- To what extent is this likely to lead to a re-allocation of costs from customers with excess margin to undermargined customers?
- For purposes of margin deficit calculations, should the Commission

address issues surrounding the timing of when an FCM must have sufficient funds in the futures customer account to cover all margin deficits? If so, how should the Commission address such issues?

In addition to the foregoing, the Commission also is proposing to revise requirements regarding the written acknowledgment letter that an FCM or DCO is required to obtain from a depository holding futures customer funds. Regulation 1.20 currently requires an FCM or DCO to obtain a written acknowledgment from each depository, unless the depository is a DCO that has rules approved by the Commission providing for the segregation of customer funds. The written acknowledgment must state that the depository was informed that the futures customer funds deposited belong to futures customers and are being held in accordance with the provisions of the Act and Commission regulations.

The Commission previously proposed amendments to the acknowledgment letter regulations. On February 20, 2009, the Commission published proposed amendments to §§ 1.20, 1.26, and 30.7 for public comment (the ''Original Proposal'').[52] The Original Proposal set out specific representations that would have been required to be included in all acknowledgment letters in order to reaffirm and to clarify the obligations that depositories incur when accepting customer funds or secured amount funds.[53]

In light of the comments on the Original Proposal, the Commission determined to re-propose the amendments with several changes made in response to comments (the ''Revised Proposal'').[54] As part of the Revised Proposal, the Commission proposed the required use of standard template acknowledgment letters which were included as Appendix A to each of § 1.20 and 1.26, and Appendix E to Part 30 of the Commission's regulations (referred to herein as the ''Template Letters'' or ''Acknowledgment Letters'').

The Commission received nine comment letters on the Revised Proposal.[55] In general, the commenters were supportive of the Commission's Revised Proposal and, in particular, were very supportive of requiring the use of Template Letters. It was noted by certain commenters that use of a standard template will simplify the process of obtaining an Acknowledgment Letter.[56] In addition, it was noted by commenters that uniformity of Acknowledgment Letters will provide consistency and legal certainty across the commodities and banking industries.[57]

The Commission is proposing revised amendments to the Acknowledgment Letters in this release to address several issues that have arisen as a result of the recent MF Global and Peregrine failures and the adverse impact on customers that had funds on deposit with these FCMs. The additional amendments are discussed below. The Commission also has revised the Acknowledgment Letters to address comments to the Revised Proposal. These revisions are discussed immediately below.

1. Obligation To Obtain New Acknowledgment Letters

Under the Revised Proposal, an FCM or DCO would be required to obtain a new Acknowledgment Letter within 60 days of changes in the name of any party to the Acknowledgment Letter or changes to the account number(s) under which customer funds are held. FIA stated that it is unduly burdensome to require the parties to execute a new Acknowledgment Letter in the event of a party changing its name within 60 days of the event.[58] FIA recommended instead including ''binding effect'' language in the Template Letters to ensure parties remain subject to the applicable provisions.[59] If the Commission determines to adopt the amendment requirement, FIA requested that the time period be extended from 60 to 120 days because a change in name often occurs in the context of a merger or acquisition in which case the relevant party will be in the process of amending numerous agreements and related documentation.

The Commission has determined to add to the Template Letter the ''binding effect'' language as proposed by FIA, as this language will ensure the continued applicability of the Acknowledgment Letter in the event of a name change to the parties. The Commission, however, is proposing to require that FCMs and DCOs file new Acknowledgment Letters in the event of a name, address, or other change as specified in the proposed rule because the Commission believes it is important to maintain current and accurate Acknowledgment Letters to provide clear legal status of the customer account, which will better protect customers in the event of a dispute regarding the legal status of the account. The Commission is proposing a 120-day time period for an FCM to obtain new Acknowledgment Letters. Given the use of the Template Letter, which is not open to negotiation, and electronic filing, the Commission believes that 120 days is a sufficient period of time for FCMs and DCOs to obtain and file the new Acknowledgment Letters.

2. Technical Amendments to Acknowledgment Letter for Omnibus Accounts; Abbreviation of Account Names

Regulation 1.20 provides that customer funds, when deposited with a depository, ''shall be deposited under an account name that clearly identifies them as such and shows that they are segregated as required by the Act and [Part 1 of the CFTC Regulations].'' FIA noted that the account naming convention used in the proposed forms of Template Letters[60] may present certain issues with respect to Acknowledgment Letters obtained by FCMs maintaining customer funds with

[52] 74 FR 7838 (February 20, 2009).

[53] The Commission notes that both the current and proposed definition of ''customer funds'' in Regulation 1.3(gg) do not include ''secured amount funds'' as defined in Regulation 30.7 (*i.e.,* funds deposited by foreign futures or foreign options customers). See 76 FR 33066, 33085 (June 7, 2011). However, as used in this notice, unless otherwise specified, the term ''customer funds'' is meant to include secured amount funds. The regulations adopted by this notice are also being amended to use the term ''customer'' as newly proposed (*i.e.,* in this rulemaking the Commission is deleting references to ''commodity or option customers''. As necessary, the Commission distinguishes between the two types of funds in this notice by referring to ''customer segregated funds'' and ''customer secured amount funds.''

[54] 75 FR 47738 (Aug. 9, 2010).

[55] Letters were submitted by: Hunton & Williams on behalf of the Working Group of Commercial Energy Firms (''Energy Working Group''); International Derivatives Clearinghouse LLC (''IDCH''); Futures Industry Association (''FIA''); Harris, N.A. (''Harris''); Katten Muchin Rosenman LLP (''Katten''); CME Group Inc. (''CME''); The Minneapolis Grain Exchange (''MGEX''); JPMorgan Chase Bank, N.A. (''JP Morgan''); and The Federal Reserve Bank of Chicago, Financial Markets Group (''FRB Chicago'').

[56] *See* MGEX CL–00007 at 1; FIA CL–00003 at 2; Harris CL–00004 at 1.

[57] *See* MGEX CL–00007 at 1; CME CL–00006 at 2; FRB Chicago CL–00010 at 1.

[58] FIA CL–00003 at page 2.

[59] FIA suggests, for example, the following language: ''The terms of this letter shall remain binding upon the parties, their successors and assigns, including for the avoidance of doubt, regardless of the change in name of any party.'' FIA CL–00003 at page 2.

[60] Proposed Appendix A to Regulation 1.20 provides that the Account will be entitled ''[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.20 Customer Segregated Account.'' 75 FR 47738, 47743 (Aug. 9, 2010); Proposed Appendix A to Regulation 1.26 provides that the Account will be entitled ''[Name of Futures Commission Merchant or Derivatives Clearing Organization] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account.'' 75 FR 47738, 47744 (Aug. 9, 2010); and Proposed Appendix E to part 30 provides that the Account will be entitled ''[Name of Futures Commission Merchant] CFTC Regulation 30.7 Customer Secured Account.'' 75 FR 47738, 47745 (Aug. 9, 2010).

another FCM through a customer omnibus account relationship.[61] The first issue is with respect to operational limits on the number of characters available for account names. Secondly, naming conventions for such accounts typically include the words ''Customer Omnibus Account'' and the relevant account number. FIA accordingly requested the Commission to clarify that the Template Letters may be modified to permit the use of the words ''CFTC Regulated FCM Customer Omnibus Account'' to describe such accounts.

The Commission has modified the proposed Template Letters to provide an option to add the words ''CFTC Regulated FCM Customer Omnibus Account'' to describe such accounts when applicable. In addition, the Commission is proposing that if the name of the account as set forth in the Template Letter is too long for a depository's system to include all characters, the depository may abbreviate the name in order to accommodate its system, provided that (i) it remains clear that the account is a CFTC regulated segregated/secured account held for the benefit of customers (*e.g.,* ''segregated'' may be shortened to ''seg;'' ''customer'' may be shortened to ''cust;'' ''account'' to ''acct;'' etc.), and (ii) when completing an Acknowledgment Letter, such letter must include both the long and short versions of the account name.

3. Clarification Regarding Notice, Authentication, and Instruction Protocol for Commission Authorized Withdrawals

Four of the commenters to the Revised Proposal addressed the need for the Commission to establish specific standards with respect to the notice, authentication and instruction protocol regarding Commission instructions for the immediate release of funds from a Customer Account.[62]

The FRB Chicago pointed out that, as the Acknowledgment Letters will have been filed electronically with the Commission, the Commission will know all of the Depositories that have signed such letters, their location, and basic contact information. In light of this, the FRB Chicago suggests that the Commission could establish for each depository a basic but unique authentication identifier. The Commission believes this suggestion has merit, and it will consider implementing this type of data collection and identification as it works to implement the operational aspects of the electronic filing of Acknowledgment Letters.

JP Morgan suggests that the Acknowledgment Letter include a notice provision with contact information for the depository so that the Commission has information on how best to contact the depository. The Commission agrees with this suggestion and has revised the Template Letters to indicate where depository contact information may be inserted as optional information. The Commission recognizes that such information may be subject to frequent change and, therefore, at this time, the Commission is not requiring that an amended Acknowledgment Letter be filed in the event there are changes to such contact information.

Katten asserts that Depositories face legal uncertainty with respect to their release of customer funds in reliance on instructions from the Commission. Katten states that the Commission's reluctance to define ''proper notice'' or ''reasonable measures'' imposes on Depositories the conflicting obligations (i) to the Commission, to release customer funds ''immediately upon proper notice,'' and (ii) to its customer FCM, to take ''reasonable measures'' first to assure that such notice was ''duly authorized.''

With respect to due authorization, Katten requests that the Commission reconsider its decision to permit an instruction to transfer customer funds to be made orally, with written confirmation to follow. Katten believes that the depository's obligation to take ''reasonable measures'' may require it to await written confirmation in any event. In addition, Katten believes that the proposed amendments to §§ 1.20, 1.26, 30.7 and 140.91 do not limit the identity of the Commission officers and employees that may issue a notice to a depository or the process that must be followed before such a notice is issued. Katten submits that a depository would have a reasonable basis to conclude that an instruction to transfer customer funds was duly authorized if the depository could be assured that any instruction to transfer customer funds would be issued only by the Director of the Division of Clearing and Intermediary Oversight (or the Director's designee).[63] Katten recommends that ''the Commission revise the proposed rules to confirm that any such instruction may be made only by the Commission or by the director of DCIO (or the director's designee) acting with the concurrence of the General Counsel (or Deputy General Counsel).''[64] FIA requests, at a minimum, that the Commission define and limit the term ''appropriate officer or employee'' of the Commission (for example, authorization limited to Division Directors or other senior designated personnel such as Deputy Directors or Associate Directors).[65]

With respect to a ''duly authorized officer or employee of the CFTC,'' the Commission has determined to provide that any such instruction to transfer customer funds may be made by the Director of the Division of Clearing and Risk (or the Director's designee), or by the Director of the Division of Swap Dealer and Intermediary Oversight (or the Director's designee). Accordingly, the Template Letter now specifies that such instructions may only be given by the Director of the Division of Clearing and Risk (or any successor division), the Director of the Division of Swap Dealer and Intermediary Oversight (or any successor division), or the designees of such Directors under delegated authority.[66] With regard to the role of the General Counsel, the General Counsel will be consulted by the Director of the Division of Clearing and Risk (or any successor division), the Director of the Division of Swap Dealer and Intermediary Oversight (or any successor division), or the designees of such Directors prior to the exercise of the delegated authority.

The Commission does not believe, as asserted by Katten, that ''reasonable measures'' may require the depository to await written confirmation. For example, due to the nature of the

[61] FIA CL–00003 at 4 and 5.

[62] In the Revised Proposal, the Template Letter provides that ''the Funds in the Account(s) shall be released immediately, * * * upon proper notice and instruction from an appropriate officer or employee * * * of the CFTC. [FCM/DCO] will not hold [depository] responsible for acting pursuant to any instruction from the CFTC upon which [depository] has relied after having taken reasonable measures to assure that such instruction was provided to [depository] by a duly authorized officer or employee of the CFTC.''

[63] In October 2011, the Commission reorganized the Division of Clearing and Intermediary Oversight into two divisions, the Division of Clearing and Risk and the Division of Swap Dealer and Intermediary Oversight. With respect to a transfer of customer funds as contemplated in this rulemaking, instructions would come from either the Director of the Director of the Division of Clearing and Risk or the Director of the Division of Swap Dealer and Intermediary Oversight (or one of the Director's designees).

[64] *See* Katten CL–00005 at FN 3.

[65] FIA CL–00003 at page 3.

[66] The Commission will publish on its Web site the identity of the Director of the Division of Clearing and Risk, the Director of the Division of Swap Dealer and Intermediary Oversight, and the individual(s) who are authorized to serve as their designees. The Template Letters do not explicitly refer to instructions provided by ''the Commission'' because in exigent circumstances, it is not likely that action approved by a majority of Commissioners will be feasible.

exceptional circumstances that would prompt a call from the Commission, it is likely that the depository would already be aware of certain problems facing the FCM or DCO and would not be surprised to receive a phone call from a Division Director (or his or her designee). In addition, while the Commission believes it is desirable that any such instruction to release customer funds be in writing, or, if oral, to be confirmed in writing, the Commission is not limiting the manner of notice in the Template Letter given the potential exigencies of the situation and the need for flexibility in communication. For example, either the Commission or the depository could be experiencing unexpected technical problems in its respective email servers or facsimile machines. It is critical that the transfer of customer funds from a Segregated Account not be delayed as a result of technical or other operational issues.

With respect to the release of customer funds ''immediately upon proper notice,'' Katten commented that it appreciates the Commission's recognition of the potential practical obstacles to immediate release (*e.g.,* Fedwire is unavailable). However, Katten remains concerned that, in the absence of further guidance or clarification, the use of the term ''immediately'' may subject a depository to potential claims by either FCMs or the Commission in the event that there is a delay in the transfer of customer funds, even if such delay is the result of reasonable actions on the part of the depository or events beyond the control of the depository. In addition, FIA commented that it would like the Commission to confirm that its authority to require the transfer of customer funds would be expected to be used sparingly (*i.e.,* ''only in exceptional circumstances'').

After considering these comments, the Commission is proposing to retain the use of the word ''immediately'' in the Template Letter regarding instructions to a depository for release of customer funds. First, in response to FIA's comment, the Commission clarifies that the use of its authority to require the immediate release of customer funds would be in exceptional circumstances. As stated in the Revised Proposal, ''[t]he Commission would issue such an instruction only when, in the judgment of the Commission, it is necessary to do so for the protection of customer funds. For example, the prospective insolvency of the FCM could prompt an instruction from the Commission to release the customer funds.'' [67] Next, the Commission notes that anything less than the term ''immediate'' could leave the timing open to interpretation, which could cause delays in the transfer of funds and have a potential impact on safety and soundness of customer funds and positions. In this regard, the Commission notes that customer funds in the Segregated Account have always been subject to withdrawal immediately upon demand by the FCM.[68]

4. Limiting the ''Merger'' Clause in the Acknowledgment Letter

CME believes that the use of an integration clause (*i.e.,* the statement that the Acknowledgment Letter ''constitutes the entire understanding of the parties with respect to its subject matter'') in the Template Letters is inappropriate and could have a number of serious and unintended consequences. For example, the parties to the Acknowledgment Letter could be prevented from relying upon and enforcing terms of applicable account (or similar) agreements that do not conflict with the Acknowledgment Letter. CME believes the term ''subject matter'' is ambiguous and could be interpreted very broadly thereby casting doubt on the validity and interpretation of existing agreements between the parties. The CME suggests the following more narrowly tailored language for the integration clause in the Template Letters: ''This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior Acknowledgment Letter, to the extent that such prior agreement is inconsistent with the terms hereof.''

FIA agrees with the CME's comment that the scope of the ''merger clause'' in the Template Letters should be narrowed to make clear that these clauses do not invalidate the terms of other agreements that may have been entered into by the parties and that do not conflict with the Template Letters. The FRB Chicago also believes that this provision should be narrowed so that a bank's standard account opening agreements, corporate resolutions and other agreements incorporated by reference should govern the remainder of the account relationship, but *not* matters specific to section 4d of the Act. Should there be a conflict, the Acknowledgment Letter should govern matters specific to section 4d of the Act.

The Commission agrees with the commenters that the scope of the ''merger clause'' language in the Template Letter [69] should be narrowed. Accordingly, the Commission is replacing the clause with CME's suggested language above. In addition, in order to incorporate the comment of the FRB Chicago and to ensure that future agreements between the parties do not negate the Acknowledgment Letter, the Commission is adding the following sentence to the end of the new language: ''In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to section 4d of the Act and the CFTC's regulations, as amended.''

5. New Proposed Amendments to Acknowledgment Letters

The Commission is also now proposing under Appendix A to § 1.26 and Appendix F to § 30.7 an additional acknowledgment letter template form for money market mutual funds (to the extent they are permissible investments under § 1.25). The template form for money market mutual funds is substantially the same as the Acknowledgment Letters. The Commission requests comment on all aspects of the template form.

In addition, the Commission is proposing to add language to its proposed Acknowledgment Letters (under § 1.20, § 1.26 and § 30.7) authorizing and requiring the depository to grant—at all times—read-only electronic access to such accounts to the Commission and, in the case of an FCM, to the FCM's DSRO. Given recent events, the Commission believes such access is crucial to the protection of customer funds. The Commission is also proposing a substantive requirement for

[67] 75 FR 47738, 47740. The Revised Proposal also noted that, as set forth in the Template Letter, in the event the FCM becomes subject to a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, the depository will have no obligation to release the customer funds except upon instruction from the bankruptcy trustee or pursuant to a court order. *Id.*

[68] *See* Amended Financial and Segregation Interpretation No. 10, 70 FR 24768 (May 11, 2005) (''Thus any impediments or restrictions on the FCM's ability to obtain immediate and unfettered access to customer funds are not permitted. The immediate and unfettered access requirements is [sic] intended to prevent potential delay or interruption in securing required margin payments that, in times of significant market disruption, could magnify the impact of such market disruption and impair the liquidity of other FCMs and clearinghouses.'')

[69] The merger clause language in the Revised Proposal's Template Letter reads as follows: ''This letter agreement constitutes the entire understanding of the parties with respect to its subject matter and supersedes and replaces all prior writings, including any applicable agreement between the parties in connection with the Account(s), with respect thereto.''

this access in §§ 1.20, 1.26 and 30.7 in addition to the language in the Acknowledgment Letters.

The proposal for read-only access is not intended to require a depository to have the ability to provide the Commission or an FCM's DSRO with real-time information regarding an FCM's account balance. The Commission understands that depositories may not have the capability to provide customers or any other party with real-time account balances and position information. The conditions of the proposal would be satisfied if the depository had the capability to provide read-only access to account information as of the close of the prior business day.

The Commission intends to continue to explore possible uses of technology to enhance its ability to protect customer funds. Read-only access will allow Commission staff to review an FCM's segregated account balances reported by depositories and to compare those balances to the FCM's reported account balances either as part of a review of the firm, or in circumstances where the Commission is concerned about the financial condition of the firm. The read-only access is an additional tool that Commission staff may use as part of its assessment of the financial condition of an FCM and the safety of customer funds. The Commission will continue to review how direct access to account balances and the use of technology can provide greater assurance as to the safety of customer funds held by an FCM.

The Commission requests comment on all aspects of the proposed amendments to § 1.20. Specifically, the Commission requests comment on the following:

- The proposal requires each depository to provide the Commission and an FCM's DSRO with direct, read-only access to the FCM's accounts held by the depository. What technology issues are raised by the Commission's proposal? How can the Commission adequately address such technology issues?
- What account information can depositories currently provide to the Commission and to DSROs via the internet on a read-only basis? Do all depositories (*e.g.,* banks, trust companies, derivatives clearing organizations, or other FCMs) have the capability of using the Internet to provide account access to the Commission and DSROs? Are there other options for depositories to provide read-only access to FCM accounts other than the internet?
- How should the Commission implement this requirement? What timeframe would be appropriate to make the requirement effective? Please provide analysis with your comment.

H. Proposed Amendments to § 1.22: Use of Futures Customer Funds

The Commission proposes to amend § 1.22 by clarifying that the prohibition on the FCM's use of one futures customer's funds to margin or secure the positions of another futures customer, or to extend credit to another person, applies at all times.

Regulation 1.22 provides that an FCM may not use the cash, securities or other property deposited by one futures customer to purchase, margin or settle the trades, contracts, or other positions of another futures customer, or to extend credit to any other person. Regulation 1.22 further provides that an FCM may not use the funds deposited by a futures customer to carry trades or positions, unless the trades or positions are traded through a designated contract market.

The proposed amendment to clarify that the prohibition on the FCM's use of one futures customer's funds to margin positions of another futures customer is intended to remove any question as to the permissibility of being undersegregated at any point in time during the day. Section 4d(a)(2) requires an FCM to segregate futures customers' funds from its own funds, and prohibits an FCM from using the funds of one customer to margin or extend credit to any other futures customer or person. The Commission believes that section 4d(a)(2) is intended to provide a maximum level of protection to futures customer funds, which would be thwarted and inconsistent with the reading of the Act if an FCM only recognized this principle at the end of the trading day. Further, the Commission is proposing language providing a clear mechanism to ensure compliance with this prohibition, which is to require an FCM to maintain residual interest in segregated accounts in an amount which exceeds the sum of all margin deficits for futures customers. The Commission also is proposing that the sum of all margin deficits be reported on the Segregation Schedule (as discussed previously with respect to proposed amendments to § 1.10) and also required to be reported on the daily segregation calculation (as discussed further herein with respect to proposed amendments to § 1.32), so that compliance review of this mechanism can be performed.

I. Proposed Amendments to § 1.23: Interest of Futures Commission Merchant in Segregated Futures Customer Funds; Additions and Withdrawals

The Commission is proposing to amend § 1.23 to require additional safeguards with respect to an FCM withdrawing futures customer funds from segregated accounts that are part of the FCM's residual interest in such accounts.

Regulation 1.23 provides that an FCM may deposit unencumbered proprietary funds, including securities that qualify as permitted investments under § 1.25, into segregated futures customer accounts in order to ensure that the firm always maintains sufficient funds in such accounts to meet its total obligations to futures customers. FCMs, by virtue of practical necessity, must keep proprietary funds in segregated futures customer accounts in order to act as a buffer between futures customers whose funds are commingled in such accounts. In the event that any futures customer were to experience losses such that the customer has insufficient funds to meet the margin requirements at clearing organizations associated with its positions, or if all of the funds deposited by the futures customer were depleted and the account had a debit balance, without proprietary funds of the FCMs being held in such accounts to absorb the debit balance as it accrued, funds of other futures customers would be used to guarantee the undermargined amount or the debit. For this reason, FCMs are permitted to deposit their own funds into segregated accounts and to maintain a residual financial interest in such accounts. Regulation 1.23 further provides that an FCM's books and records must always reflect the firm's residual interest in the accounts of its futures customers.

In addition, an FCM is permitted to withdraw funds from futures customer accounts for the FCM's proprietary use to the extent of the FCM's actual residual interest in such accounts. The withdrawal, however, may not result in the FCM failing to hold sufficient funds to meet its obligations to its futures customers, or in the funds of one futures customer margining or securing the positions of another futures customer. The Commission also is proposing that the residual amount maintained by an FCM be required to exceed the sum of margin deficits for futures customers, as discussed previously with respect to §§ 1.20 and 1.22, to provide a clear mechanism to ensure that the funds of one futures customer are not used to margin or guarantee the positions of

another futures customer. Irrespective of the procedures permitting withdrawals of residual interest under the amendments proposed, the proposed amendments further make clear that no withdrawals may be made of residual interest to the extent of the sum of margin deficits.

If an FCM does not have adequate internal controls governing the calculation and withdrawal of its residual interest from futures customer accounts, the FCM's actions may actually result in the withdrawal of futures customer funds and not the FCM's residual interest. Such a withdrawal would be a violation of section 4d(a)(2) of the Act.

The Commission, therefore, is proposing to amend § 1.23 to include additional safeguards applicable to an FCM's withdrawal of funds from the accounts of futures customers that are part of the FCM's residual interest in such accounts. Under proposed § 1.23(a), an FCM will still have access to its own funds deposited into futures customer accounts to the extent of the FCM's residual interest therein, subject to the restriction on withdrawal of residual interest equal to the sum of margin deficits. However, proposed § 1.23(b) will prohibit an FCM from withdrawing any of its residual interest or excess funds from futures customer accounts (any withdrawal not made for the benefit of futures customers would be considered a withdrawal of the FCM's residual interest) on any given business day unless the FCM had completed the daily calculation of funds in segregation pursuant to § 1.32 as of the close of the previous business day, and the calculation showed that the FCM maintained excess segregated funds in the futures customer accounts as of the close of business on the previous business day. Proposed § 1.23(b) further requires that the FCM adjust the excess segregated funds reported on the daily segregation calculation to reflect other factors, such as overnight and current day market activity and the extent of current customer undermargined or debit balances, to develop a reasonable basis to estimate the amount of excess funds that remain on deposit since the close of business on the previous day prior to initiating a withdrawal.

The Commission also is proposing several additional required layers of authorization and documentation if the withdrawal exceeds, individually or in the aggregate with other such withdrawals, 25 percent of the FCM's residual interest. Proposed § 1.23(c) prohibits an FCM from withdrawing more than 25 percent of its residual interest in futures customer accounts unless the FCM's CEO, CFO, or other senior official that is listed as a principal on the firm's Form 7–R registration statement and is knowledgeable about the FCM's financial requirements (''Financial Principal'') pre-approves the withdrawal in writing.

Regulation 1.23(c) will further require the FCM to immediately file a written notice with the Commission and with the firm's DSRO of any withdrawal that exceeds 25 percent of its residual interest. The written notice must be signed by the CEO, CFO, or Financial Principal that pre-approved the withdrawal, specifying the amount of the withdrawal, its purpose, its recipient(s), and contain an estimate of the residual interest after the withdrawal. The written notice also must contain a representation from the person that pre-approved the withdrawal that to such person's knowledge and reasonable belief, the FCM remains in compliance with its segregation obligations. The proposal further requires that the official in making this representation specifically consider any other factors that may cause a material change in the FCM's residual interest since the close of business on the previous business day, including known unsecured futures customer debits or deficits, current day market activity, and any other withdrawals. The written notice would be required to be filed with the Commission and with the FCM's DSRO electronically.

Proposed § 1.23(d) requires an FCM that has withdrawn funds from segregated futures customer accounts for its own purposes, and such withdrawal causes the firm to fall below its targeted residual interest in such accounts, to deposit proprietary funds into the accounts to restore the residual interest balance to the targeted amount. The FCM must deposit the proprietary funds into the segregated account prior to the close of the next business day. Alternatively, the FCM may revise its targeted residual interest amount, if appropriate, in accordance with its written policies and procedures for establishing, documenting, and maintaining its target residual interest, in accordance with the requirements of proposed § 1.11. Should an FCM's residual interest, however, be exceeded by the sum of the FCM's futures customers' margin deficits, an amount necessary to restore residual interest to that sum must be deposited immediately.

The Commission's proposal is consistent in most respects with NFA's recent rule amendments that require FCMs to maintain written policies and procedures regarding the withdrawal of proprietary funds from futures customers' segregated accounts discussed in Section I.D above. The proposal will continue to provide FCMs with flexibility to access the residual interest in segregated funds, but with the responsibility to ensure that any withdrawals of residual interest are, in fact, the firm's own funds. This responsibility exists currently by virtue of the language of section 4d(a)(2) of the Act and § 1.23, however the processes necessary to ensure that the responsibility was carried out were not specified by regulation.

By providing a prohibition on withdrawals until the segregation calculation is performed by the FCM and submitted to the Commission and to the DSRO, and further requiring written approvals by the FCM's senior officials prior to any withdrawals in excess of 25 percent of the prior day's residual interest with notice to the Commission and a DSRO, any withdrawal of funds in excess of the residual interest will be clear violations of proposed § 1.23, and the responsibility for such violations will be clear from written pre-approvals made by the CEO, CFO or Financial Principal, or the lack thereof.

J. Proposed Amendments to § 1.25: Investment of Customer Funds

The Commission is proposing to amend § 1.25(b)(3)(v) to provide that the 25-percent counterparty concentration limit for reverse repurchase agreements applies not only to a single counterparty, but to all counterparties under common control or ownership. The Commission also is proposing to delete paragraph (b)(6) of § 1.25 because the information that an FCM is required to record and maintain under paragraph (b)(6) is currently required by § 1.27. Further, the Commission is proposing to amend § 1.25(d) to clarify the conditions under which an FCM may deposit firm-owned securities into segregation.

Regulation 1.25 sets forth the financial investments that an FCM or DCO may make with customer funds. As one of the permitted investments, FCMs and DCOs may use customer funds to purchase securities from a counterparty under an agreement for the resale of the securities back to the counterparty (''reverse repurchase agreements''). Regulation 1.25 places conditions on such repurchase or reverse repurchase agreements, including limiting permitted counterparties to certain banks and government securities brokers or dealers, and prohibiting an FCM or DCO from entering into such

agreements with affiliate. Regulation 1.25(b)(3)(v) also imposes a counterparty concentration limit on reverse repurchase agreements that prohibits an FCM or DCO from purchasing securities from a single counterparty that exceeds 25 percent of the total assets held in segregation by the FCM or DCO.

Under the proposed amendment to § 1.25(b)(3)(v), an FCM or DCO must aggregate the value of the securities purchased from two or more different counterparties under repurchase agreements if the counterparties are under common control or ownership. The aggregate value of the securities purchased under the repurchase agreements from the counterparties must not exceed 25 percent of the total assets held in segregation by the FCM or DCO. The Commission believes that expanding the concentration limitation to counterparties under common control or ownership is consistent with the original intention of the concentration limitation, which was to minimize the potential losses or disruptions due to the default of a counterparty. If the counterparties are under common control or ownership, a default by one counterparty may adversely impact all of the counterparties.

The Commission also is proposing to amend § 1.25 by deleting paragraph (b)(6), which requires an FCM or DCO to prepare a record, on a daily basis, detailing the type of instruments in which customer funds were invested, the original costs of the investments, and the current market value of the investments. As noted above, the information that an FCM is required to record and maintain under paragraph (b)(6) is currently required by § 1.27.

Finally, the Commission is proposing to amend § 1.25(d)(7) to recognize that a DCO designated as systemically important (''SIDCO'') by the Financial Stability Oversight Council may keep securities transferred to the SIDCO under a repurchase or reverse repurchase agreement in a safekeeping account with a Federal Reserve Bank, as authorized by section 806 of the Dodd-Frank Act.

K. Proposed Amendments to § 1.26: Deposit of Obligations Purchased With Futures Customer Funds

As discussed above, the Commission has previously proposed to amend § 1.26 along with § 1.20 to require a template form of Acknowledgment Letter—in addition to other substantive requirements and obtaining and filing such Acknowledgment Letters—with respect to the deposit of instruments purchased with customer funds, including money market mutual funds. As discussed earlier with respect to § 1.20, the Commission received and analyzed comments on those proposals.

As noted above, the Commission is herein proposing changes to the template Acknowledgment Letter set forth in Appendix A to § 1.26 for money market mutual funds, which incorporate revisions based on the Commission's analysis of prior comments, and is proposing new additions to such template. The Commission is also proposing new substantive requirements applicable to obtaining and filing such written Acknowledgment Letters. A new substantive requirement under § 1.26, as proposed to be amended and included in the template form, is a requirement that depositories provide the Commission and, and in the case of an FCM, the FCM's DSRO—at all times—with read-only electronic access to all FCM and DCO accounts holding customer funds.

L. Proposed Amendments to § 1.29: Increment or Interest Resulting From Investment of Customer Funds

The Commission is proposing to amend § 1.29 to explicitly provide that an FCM bears sole responsibility for any losses resulting from the investment of customer funds in financial instruments permitted under § 1.25.

Regulation 1.29 provides that an FCM is not prohibited from keeping as its own any interest or other gain resulting from the investment of customer funds in financial instruments permitted under § 1.25. Regulation 1.25 also provides that an FCM must manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity.

The proposed amendment clarifies that an FCM is solely responsible for any losses that result from the investment of customer funds in the financial instruments listed under § 1.25. An FCM may not charge or otherwise allocate any such losses to the accounts of the FCM's customers. To allocate losses on the investment of customer funds would result in the use of customer funds in a manner that is not consistent with section 4d(a)(2) and § 1.20, which provides that customer fund can only be used for the benefit of futures customers and limits withdrawals from futures customer accounts, other than for the purpose of engaging in trading, to certain commissions, brokerage, interest, taxes, storage or other fees or charges lawfully accruing in connection with futures trading.

The Commission requests comment on the proposed amendment to explicitly provide that losses resulting from the investment of customer funds may not be allocated by an FCM to customers. The Commission also requests comment on how any losses associated with bank deposits should be addressed. The Commodity Exchange Authority issued an Administrative Determination (''AD'') in 1971 that provides that an FCM may not be liable for losses resulting from the deposit of customer funds with a bank that subsequently closes or is unable to repay the FCM's deposit.[70] The AD provides that an FCM would not be liable if it had used due care in selecting the bank, had not otherwise breached its fiduciary responsibilities toward the customers, and had fully complied with the requirements of the Act and the Commission regulations relating to the handling of customers' funds. The Commission requests comment on whether the regulations should be revised to impose an obligation on an FCM to repay customer funds in the event of a default by a bank holding customer funds. Should there be a distinction drawn between U.S.-domiciled and regulated banks and non-U.S.-domiciled banks?

M. Proposed Amendments to § 1.30: Loans by Futures Commission Merchants: Treatment of Proceeds

The Commission is proposing to amend § 1.30 to provide that an FCM may not loan funds to finance a customer's trading account on an unsecured basis, or accept as collateral for the loan the customer's trading account.

Regulation 1.30 provides that Commission regulations do not prevent an FCM from lending its own funds to a customer that has pledged securities and property, or from repledging or selling the customer's securities or property pursuant to specific written agreement of the customer. This provision generally allows customers to deposit non-cash collateral as initial and variation margin. Absent the provisions in § 1.30, an FCM may be required to liquidate the non-cash collateral if the customer was subject to an initial or variation margin call.

The Commission is proposing to amend § 1.30 to prohibit an FCM from loaning funds to finance a customer's trading account on an unsecured basis, or from accepting a customer's trading account as collateral for the loan. The Commission believes that extending unsecured loans to customers is not a

[70] *Liability of Futures Commission Merchants and Clearing Associations,* Administrative Determination No. 230 (Nov. 23, 1971).

common occurrence as the current capital requirements in § 1.17 would require the FCM to take a 100 percent capital charge on the unsecured receivables from the customers associated with such loans. Commission staff has, however, had to provide its views on whether a customer trading account may be used to collateralize a loan from the FCM.

A trading account does not qualify as readily marketable securities that are generally required to collateralize a loan for the FCM to avoid the 100 percent unsecured receivable capital charge.[71] Rules of the CME also prohibit an FCM from providing unsecured financing to a customer for margin purposes.[72] The Commission is proposing to explicitly prohibit unsecured lending by FCMs to customers in the proposed amendments in § 1.30. Should customers have liquidity needs sufficient to require unsecured lending, the Commission believes it to be prudent to require that such unsecured lending be done by a party other than the FCM carrying the customer account. This newly proposed prohibition comports with the Commission's existing regulatory requirement contained in § 1.56 that provides that no FCM may represent that it will not call for or attempt to collect initial and maintenance margin as established by the rules of the applicable board of trade.

N. Proposed Amendments to § 1.32: Segregated Account: Daily Computation and Record

The Commission is proposing to amend § 1.32 to require additional safeguards with respect to futures customer funds on deposit in segregated accounts, and to require FCMs to provide twice each month a detailed listing to the Commission of depositories holding customer funds.

Regulation 1.32 requires an FCM to prepare a daily record as of the close of business each day detailing the amount of funds the firm holds in segregated accounts for futures customers trading on designated contract markets, the amount of the firm's total obligation to such customers computed under the Net Liquidating Equity Method, and the amount of the FCM's residual interest in the futures customer segregated accounts. In addition, the daily record must detail the sum of the futures customers' margin deficits, to ensure that residual interest equals or exceeds such sum. In performing the calculation, an FCM is permitted to offset any futures customer's debit balance by the market value (less haircuts) of any readily marketable securities deposited by the particular customer with the debit balance as margin for the account. The amount of the securities haircuts are as set forth in SEC Rule 15c3–1(c)(vi).

FCMs are required to perform the segregation calculation prior to noon on the next business day, and to retain a record of the calculation in accordance with § 1.31. Both the CME and NFA require their respective member FCMs to file the segregation calculations with the CME and NFA, as appropriate, each business day. FCMs, however, are only required to file a segregation calculation with the Commission at month end as part of the Form 1–FR–FCM (or FOCUS Reports for dual-registrant FCM/BDs). Regulation 1.12, as discussed in Section II.C above, requires the FCM to provide immediate notice to the Commission and to the firm's DSRO if the FCM is undersegregated at any time.

The Commission is proposing to amend § 1.32 to require each FCM to file its segregation calculation with the Commission and with its DSRO each business day. The Commission also is proposing to amend § 1.32 to require FCMs to use the Segregation Schedule contained in the Form 1–FR–FCM (or FOCUS Report for dual-registrant FCM/BDs) to document its daily segregation calculation.

As noted above, the CME and NFA require their respective member FCMs to file their segregation calculations with them on a daily basis. The CME and NFA also require the FCMs to document their segregation calculation using the Segregation Schedule contained in the Form 1–FR–FCM. Therefore, the additional requirement of filing a Segregation Schedule with the Commission is not a material change to the regulation.[73]

The Commission believes that the filing of a Segregation Schedule by each FCM each day will significantly enhance its ability to monitor and protect customer funds. Commission staff will be able to determine almost immediately upon receipt of the Segregation Schedule whether a firm is undersegregated and immediately take steps to determine if the firm is experiencing financial difficulty or if customer funds are at risk.[74] Commission staff also can coordinate the review of the daily segregation computations with the additional bank and other depository information that it will have access to under proposed § 1.23.

In addition, the use of the Segregation Schedule provides a uniform way for each FCM to present its information to the Commission, in a format that both the Commission and FCMs are familiar with that will reduce significantly the possibility of a miscommunication regarding the information that is reported. The standardized Segregation Schedule will also facilitate the Commission's ability to compare one FCM to another, and to perform additional trend and other analysis to identify potential issues with the holding of customer funds. The filing of daily segregation records also will allow staff to monitor significant movements in the balances of segregated funds on a day-to-day basis.

Proposed § 1.32(d) provides that the Segregation Statement must be filed with the Commission and with the FCM's DSRO electronically using a form of user authentication assigned in accordance with procedures established or approved by the Commission. The Commission is not proposing to change the timeframe for the preparation of the Segregation Statements. The Segregation Statement must be filed by noon (based upon the location of the FCM) the next business day.

The Commission also is proposing to amend § 1.32(b) to provide that in determining the haircuts for commercial paper, convertible debt instruments, and nonconvertible debt instruments deposited by customers as margin, the FCM may develop written policies and procedures to assess the credit risk of the securities as proposed by the SEC and discussed more fully in Section II.F above. If the FCM's assessment of the credit risk is that it is minimal, the FCM may apply haircut percentages that are lower than the 15 percent default percentage under SEC Rule 15c3–1(c)(2)(vi).

The Commission is further proposing to amend § 1.32 by requiring each FCM to file detailed information regarding depositories and the substance of the investment of customer funds under § 1.25. Proposed paragraphs (f) and (j) of § 1.32 will require each FCM to submit

[71] Regulation 1.17(c)(3).

[72] CME Rule 930.G.—Loans to Account Holders—provides that clearing members may not make loans to account holders to satisfy their performance bond requirements unless such loans are secured by readily marketable collateral that is otherwise unencumbered and which can be readily converted into cash.

[73] In fact, since FCMs file the Segregation Schedules with the CME and NFA via WinJammer, the Commission already has access to the filings, and the amendment will not require an FCM to change any of its operating procedures.

[74] Each Form 1–FR–FCM and FOCUS Report is received by the Commission via WinJammer. The financial forms are automatically electronically reviewed within several minutes of being received by the Commission and if a firm is undersegregated an alert is immediately issued to Commission staff members via an email notice.

to the Commission and to the firm's DSRO a listing of every bank, trust company, DCO, other FCM, or other depository or custodian holding customer funds.

The listing must specify separately for each depository the total amount of cash and § 1.25 permitted investments held by the depository for the benefit of the FCM's customers. Specifically, each FCM must list the total amount of cash, United States government securities, United States agency obligations, municipal securities, certificates of deposit, money market mutual funds, commercial paper, and corporate notes held by each depository, computed at current market values. The listing also must specify: (1) If any of the depositories are affiliated with the FCM; (2) if any of the securities are held pursuant to an agreement to resell the securities to a counterparty (reverse repurchase agreement) and if so, how much; and (3) the depositories holding customer-owned securities and the total amount of customer-owned securities held by each of the depositories. The FCM is also required to disclose if any of the depositories are affiliated with the FCM.

Each FCM is required to submit the listing of the detailed investments to the Commission and to the firm's DSRO twice each month. The filings must be made as of the 15th day of each month (or the next business day, if the 15th day of the month is not a business day) and the last business day of the month. The filings are due to the Commission and to the firm's DSRO by 11:59 p.m. on the next business day.

Proposed paragraph (k) of § 1.32 will require each FCM to retain the Segregation Statement prepared each business day and the detailed investment information, together with all supporting documentation, in accordance with § 1.31.

The Commission's proposal is similar to existing SRO practices and rules. The CME and NFA recently adopted rules requiring member FCMs to submit detailed information on how they invest customer funds and the depositories holding customer funds. The information required to be filed by FCMs with the CME and NFA is consistent with the information that FCMs are required to file with the Commission and DSROs under the proposed amendments to § 1.32, with the exception that the current CME rule does not require member FCMs to submit information regarding the holding of customer-owned securities. The proposed timeframes for both preparing and filing both the Segregation Statements and the detailed investment information are consistent between the SRO rules and proposed § 1.32.

The Commission also notes that NFA will be publishing information on its Web site regarding how each FCM invests and holds customer funds. Commission staff is consulting with NFA and is assessing whether NFA should be the primary method for the public to obtain information on how FCMs hold and invest customer funds.

The twice monthly filing of information on the investment of customer funds will provide the Commission and SROs with more timely detailed information regarding how FCMs are holding and investing customer funds, which will allow the Commission and SROs to more closely monitor customer funds to assess their safety. In this regard, the reporting of the use of depositories that are affiliated with the FCM will alert staff to review such relationships more closely to ensure that transactions are done in an appropriate arms-length manner and not to the benefit of the affiliated depository. Staff also can compare reported the reported investment balances with information maintained directly by the depositories using the on-line access that the depositories will be required to provide to Commission staff under § 1.20 discussed above.

The Commission request comment on all aspects of the proposed amendments to § 1.32. Specifically, the Commission requests comments on the following:

- Should the Commission amend the regulations to require each FCM to disclose information regarding its investments of customer funds? If so, what information should be disclosed? What investment information would be of the most benefit to market participants in assessing whether to entrust funds to a particular FCM? How would the investment information be used by market participants?
- How frequently should investment information be disclosed? What format should be used to disclose the information? How should the information be disclosed? Should the information be posted on the FCM's internet web site?
- Should NFA act as the primary source for the disclosure of how FCMs hold and invest customer funds?

O. Proposed Amendments to § 1.52: Self-Regulatory Organization Adoption and Surveillance of Minimum Financial Requirements

SROs are required by the Act and Commission regulations to monitor their member FCMs for compliance with the Commission's and SROs' minimum financial and related reporting requirements. Specifically, DCM Core Principle 11 provides, in relevant part, that a board of trade shall establish and enforce rules providing for the financial integrity of any member FCM and the protection of customer funds.[75] In addition, section 17 of the Act requires NFA to establish minimum capital, segregation, and other financial requirements applicable to its member FCMs, and to audit and to enforce compliance with such requirements.[76]

The Commission also has established in § 1.52 minimum elements that each SRO financial surveillance program must contain to satisfy the statutory objectives of Core Principle 11 and section 17 of the Act. In this regard, § 1.52 requires, in part, each SRO to adopt and to submit for Commission approval rules prescribing minimum financial and related reporting requirements for member FCMs. The rules of the SRO also must be the same as, or more stringent than, the Commission's requirements for financial statement reporting under § 1.10 and minimum net capital under § 1.17.

In addition, the Commission adopted final amendments to § 1.52 on May 10, 2012, to codify previously issued CFTC staff guidance regarding the minimum elements of an SRO financial surveillance program.[77] The final amendments require an SRO to: (1) Maintain staff of an adequate size, training, experience, and independence to effectively implement a supervisory program; (2) maintain a program that provides for the ongoing surveillance of FCMs through review of financial statements and regulatory notices; (3) identify firms that pose a high degree of potential risk, including risk to customer funds; (4) conduct routine, periodic onsite examinations of FCMs; and (5) adequately document all aspects of the operation of the supervisory program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive actions for material violations.

In order to effectively and efficiently allocate SRO resources over FCMs that are members of more than one SRO, § 1.52(c) currently permits two or more SROs to enter into an agreement to establish a joint audit plan for purpose of assigning to one of the SROs (the DSRO) of the joint audit plan the function of monitoring and examining member FCMs for compliance with

[75] 7 U.S.C. 7(d)(11).

[76] 7 U.S.C. 21(p).

[77] 77 FR 36611 (June 19, 2012).

certain regulatory and financial reporting obligations. The audit plan must be submitted to the Commission for approval. The Commission may approve a joint audit plan, or part of such a plan, after notice and comment if the Commission determines that the plan: (1) Is necessary or appropriate to serve the public interest; (2) is for the protection and in the interest of customers; (3) reduces multiple monitoring and auditing for compliance with the minimum financial requirements; (4) reduces multiple reporting of financial information; (5) fosters cooperation and coordination; and (6) does not hinder the development of a registered futures association. Currently all active SROs are members of a joint audit plan that was approved by the Commission on March 18, 2009.[78]

The Commission is proposing additional amendments to § 1.52 in light of recent events that highlight a need for strengthening the minimum requirements that SROs must abide by in conducting financial surveillance to minimize the chances that FCMs that engage in unlawful activities that result, or could result, in the loss of customer funds or the inability of the firms to meet their financial obligations to market participants, including DCOs, go undetected. The proposed amendments to § 1.52 revise the current supervisory program required to be established and implemented by SROs pursuant to existing § 1.52(b) with respect to their FCM members. In addition, for SROs that choose to delegate their duties to oversee and examine FCMs that are members of two or more SROs to a DSRO pursuant to a plan established under existing § 1.52(c) in lieu of each conducting its own oversight and examinations of such common FCM members, proposed § 1.52 provides that the plan adopt certain requirements to assure the quality of the DSRO oversight and examinations conducted under the plan, both as to the substance of the oversight and examination program and the application of such program.

Proposed § 1.52(b) requires each SRO to adopt rules requiring its member FCMs to establish a risk management program that is at least as stringent as the risk management program required in proposed § 1.11. Proposed § 1.11 is discussed in Section II.B above, and requires an FCM to establish a risk management program designed to monitor and manage risks associated with the activities of the FCM.

Proposed § 1.52 does not make significant changes to the existing SRO supervisory programs with respect to the oversight and examination of retail foreign exchange dealer and IB member registrants. However, with respect to the oversight and examination of FCMs, proposed § 1.52 requires an SRO to adopt significant new requirements in its supervisory program. The supervisory program for FCMs will now explicitly require, among other things, controls testing as well as substantive testing, and the examination process for each FCM must be driven by the risk profile of each such FCM. In addition, the supervisory program must conform to U.S. GAAS after giving full consideration to those auditing standards as prescribed by the PCAOB. The supervisory program also must contain written standards addressing numerous aspects of the examination process over FCMs as provided in proposed § 1.52(c)(2)(iii), including the examination of the risk assessment process, the examination of the planning process, and the quality control procedures to ensure that the examinations maintain the level of quality expected by the SRO.

The Commission believes that an examination of an FCM must include a review and assessment of the firm's internal controls in order to identify where there may be potential weaknesses and to properly gauge the risks associated with such weaknesses including their potential impact on the financial condition of the firm and the protection of customer funds.

The SRO also must engage an ''examinations expert'' under § 1.52(c)(2) to review its supervisory program and the application of the supervisory program at least once every two years. The term ''examinations expert'' is proposed to be defined under § 1.52(a) as a nationally recognized accounting and auditing firm with substantial expertise in audits of FCMs, risk assessment and internal control reviews, and is someone acceptable to the Commission. The Commission is proposing to delegate to the Director of the Division of Swap Dealer and Intermediary Oversight the responsibility of assessing whether a particular entity is qualified and approved as an examinations expert to review the SRO's supervisory program

The review will require the examinations expert to assess the sufficiency of the SRO's risk-based approach and the internal controls testing and also whether the supervisory program is being appropriately applied by the SRO in its examinations of its member FCMs. In addition, the review will require that the examinations expert provide an opinion as to whether the supervisory program is reasonably likely to identify a material deficiency in internal controls of the FCM or in any of the other items that are the subject of an examination conducted in accordance with the supervisory program. Furthermore, the review will require that the examinations expert also provide recommendations on new or best practices prescribed by industry sources that should be incorporated in the supervisory program. The SRO must receive a written report from the examinations expert describing, among other things, the items mentioned in this paragraph.

Upon receipt of the written report, the SRO must provide such written report to the Commission. The SRO must update the supervisory program and coordinate with the Commission to resolve any issues raised by the written report and any Commission questions and comments before the updated supervisory program becomes the standard for the SRO's examinations of its registered FCM members. Proposed § 1.52(c)(2)(vi) also requires each SRO to submit an initial supervisory program within 120 days of the effective date of the regulation, or a longer period of time that Director of the Division of Swap Dealer and Intermediary Oversight (acting pursuant to authority delegated by the Commission) may approve. The initial supervisory program must contain an affirmation from the examinations expert regarding the evaluation of the supervisory program, including the sufficiency of the risk-based approach and the internal controls testing. The examinations expert also must opine as to whether the supervisory program is reasonably likely to identify a material weakness in internal controls over financial or regulatory reporting.

Consistent with the current regulation, and in order to avoid duplicative examinations and oversight of FCMs, retail foreign exchange dealers, or IBs, proposed § 1.52(d)(1) provides that when two or more SROs have a common member registrant, such SROs may voluntarily agree to establish a plan to delegate to a single DSRO the function of overseeing and examining such common member registrant otherwise required from each such SRO.

[78] The original signatories of the joint audit plan approved on March 18, 2009 are as follows: Board of Trade of the City of Chicago, Inc.; Board of Trade of Kansas City; CBOE Futures Exchange, LLC; Chicago Climate Futures Exchange, LLC; Chicago Mercantile Exchange Inc.; Commodity Exchange, Inc; ELX Futures, L.P.; HedgeStreet, Inc.; ICE Futures U.S., Inc.; INET Futures Exchange, L.L.C.; Minneapolis Grain Exchange; NASDAQ OMX Futures Exchange; National Futures Association; New York Mercantile Exchange, Inc.; NYSE Liffe US, L.L.C.; OneChicago, L.L.C.

Proposed amendments to § 1.52(d)(1) would further provide that while an SRO may delegate the functions of examining a member FCM for compliance with the minimum financial and reporting and risk management requirements, the delegating SRO retains responsibility for its member FCM's compliance with such requirements.

If SROs choose to take advantage of the efficiency provided by a joint audit plan with respect to their oversight and examinations over common member FCMs, then the plan must satisfy the requirements of proposed § 1.52(d)(2), which will assure the quality of the SROs, both as to the substance of the oversight and examination program and the application of such program. Proposed § 1.52(d)(2) requires in such a plan that the SROs form a Joint Audit Committee and adopt a Joint Audit Program pursuant to which FCMs are overseen and examined by a DSRO.

The Joint Audit Committee members will be subject to a number of duties according to proposed § 1.52(d)(2). The most important of these is that the Joint Audit Committee members establish and maintain a Joint Audit Program that the DSROs must apply in their oversight and examinations of FCMs.

The requirements for the establishment and maintenance of the Joint Audit Program are identical in many ways to the establishment and maintenance of the standalone supervisory program with respect to FCMs described in proposed §§ 1.52(b) and (c). For example, the Joint Audit Program and the standalone supervisory program both require controls testing as well as substantive testing, and the examination process for each FCM must be driven by the risk profile of each such FCM. Both programs are required to be reviewed by an examinations expert every two years. Both must have standards addressing the items listed in proposed § 1.52(c)(2)(iii), including the examination risk assessment, examination planning, and quality control to ensure that the examinations maintain the level of quality expected. The rationale for this approach is because one of the goals of proposed § 1.52(d)(2) is to ensure that the SRO and examinations of FCMs is at least up to the same heightened standard, regardless of whether the oversight and examinations are conducted by the SRO itself or by a DSRO designated by the Joint Audit Committee.

The proposed revisions to § 1.52(d) would not nullify the existing joint audit plan approved by the Commission on March 18, 2009. Furthermore, the Commission believes that the new minimum requirements for a Joint Audit Program under proposed § 1.52(d)(2) will not require revisions to the current joint audit plan. In this regard, the joint audit plan approved by the Commission includes a provision in paragraph 3 that provides that the minimum practices and procedures followed by each DSRO in the conduct of examinations of FCMs shall be established to conform with the requirements of § 1.52, Commission staff interpretations, and any other Commission requirements hereinafter in effect relating to audits and financial reviews. The Commission believes that this provision would require the DSROs of the current joint audit plan to revise their Audit Program to meet the new requirements of proposed 1.52, but not require a new joint audit plan to be submitted to the Commission.[79]

The members of the current joint audit plan would be required to establish, operate and maintain a Joint Audit Program under proposed § 1.52(d)(2)(i). The members of the current joint audit plan also would be required to submit to the Commission for its review and comment a Joint Audit Program within 120 days (or such other time as the Commission may approve) of the effective date of the amendments to § 1.52 under proposed § 1.52(d)(2)(ii)(H). The Joint Audit Program must be accompanied by a written report from an examinations expert affirming that the examinations expert has evaluated the Joint Audit Program and the examinations expert's opinion as to whether the Joint Audit Program is reasonably likely to identify a material deficiency in internal controls over financial and regulatory reporting, and other items that are subject of an examination conducted in accordance with the Joint Audit Program.

The Commission is proposing to delegate the responsibility for granting an extension of time to submit an initial Joint Audit Program to the Director of the Division of Swap Dealer and Intermediary Oversight. In this connection, the Commission anticipates that the Division of Swap Dealer and Intermediary Oversight will be performing ongoing consultation with SROs regarding the examination programs and, therefore, would be in position to assess the adequacy of, and necessity for, any request for an extension of the filing deadline. It is anticipated that the Director of the Division of Swap Dealer and Intermediary Oversight will grant requests for reasonable extensions of time for the submission of the Joint Audit Program.

The Commission requests comments on all aspects of proposed § 1.52. The Commission also requests comments on the following:

- The Commission is proposing to require that the SRO and/or JAC program be subject to an evaluation by an examinations expert at least once every two years. The examinations expert is defined as a nationally recognized accounting and auditing firm. Is the proposed definition of the examinations expert sufficiently clear or detailed to identify which entities may qualify as an examinations expert? If not, how can the Commission make the definition more objective? Should the Commission consider entities other than accounting and auditing firms (such as consulting firms) to act as examinations experts?
- Is the requirement for the examinations expert to conduct an evaluation of the SRO or JAC program at least once every two years an appropriate timeframe? Should the Commission consider a shorter interval between evaluations? If so, why? Alternatively, should the Commission consider a longer interval between evaluations? If so, why? What criteria should the Commission consider in setting the interval? Should the Commission allow SRO or JAC programs that have minimal issues raised by the examinations expert be subject to a longer evaluation interval than programs that have more issues identified by the examinations expert? If so, how would the Commission implement such a program?
- Does the requirement for an examinations expert add sufficient value to the SRO or JAC program to justify the costs of such evaluations? Please provide detail in your response to assist the Commission in assessing the costs of such evaluations.
- Are there alternatives to the examinations expert's evaluation to assess the adequacy of the SRO and JAC program that the Commission should consider? Please provide detail in your response.
- The Commission is proposing that an SRO submit an initial supervisory program and that the members of a Joint Audit Committee submit an initial Joint Audit Program within 120 days of the effective date of the regulation. The initial supervisory program and the initial Joint Audit Program must include

[79] The Commission's view is only that the current agreement does not have to be revised as a result of the proposed amendments. The SRO members of the current joint audit plan, however, are not precluded from making any amendments or otherwise revising the joint audit program consistent with the terms included in the agreement for making such revisions.

a written report containing an affirmation from an examinations expert regarding the evaluation of the supervisory program or the Joint Audit Program, including the sufficiency of the risk-based approach and the internal controls testing. The examinations expert also must opine as to whether the supervisory program or the Joint Audit Program is reasonably likely to identify a material weakness in internal controls over financial or regulatory reporting. Is the proposed 120-day period a sufficient period of time for an SRO or JAC to obtain such report from an examinations expert and to submit its respective supervisory program or Joint Audit Program? If not, what is a sufficient period of time?

P. Proposed Amendments to § 1.55: Public Disclosures by Futures Commission Merchants

The Commission is proposing to amend § 1.55 to enhance the disclosures provided to customers and potential customers regarding the extent to which customer funds are protected when deposited with an FCM as margin or to guarantee performance for trading commodity interests. The Commission also is proposing to require each FCM to disclose certain firm specific information regarding the FCM's financial condition and operations to allow customers and potential customers to assess the risks of engaging the firm to conduct futures trading and the risks of entrusting their funds to the FCM.

Regulation 1.55(a) currently requires an FCM, or an IB in the case of an introduced account, to provide each customer with a risk disclosure statement prior to opening the customer's account (''Risk Disclosure Statement').[80] Regulation 1.55(b) provides a standard form Risk Disclosure Statement that each FCM or IB is required to provide to each prospective customer. The current Risk Disclosure Statement is primarily intended to provide a customer with disclosure of the market risks of engaging in futures trading and addresses, among other things, risks associated with leverage, market movements, and the inability to exit the market due to limit moves. The FCM or IB also is required to receive a signed acknowledgment from the customer stating that the customer received and understood the Risk Disclosure Statement.

[80] FCMs and IBs are not required to provide disclosure documents to institutional customers, defined as eligible contract participants under section 1a of the Act. See § 1.55(f).

The Commission is proposing to amend § 1.55 to require FCMs to provide additional disclosures to prospective customers. Specifically, the Commission is proposing to add new provisions to paragraph (b) that will require the Risk Disclosure Statement to contain a statement that: (1) Customer funds are not protected by insurance in the event of the bankruptcy or insolvency of the FCM, or if customer funds are misappropriated in the event of fraud; (2) customer funds are not protected by SIPC, even if the FCM is a BD registered with the SEC; and (3) customer funds are not insured by a DCO in the event of the bankruptcy or insolvency of the FCM holding the customer funds. The proposed amendments also will require an FCM to disclose that each customer's funds are not held in an individual segregated account by an FCM, but rather are commingled in one or more accounts, and that FCMs may invest funds deposited by customers in investments listed in § 1.25. The proposed amendments also will require that each FCM disclose that funds deposited by customers may be deposited with affiliated entities of the FCM, including affiliated banks and brokers.

The Commission also is proposing to revise the Risk Disclosure Statement required by § 1.55(b) to include a new disclosure that informs a potential customer that each futures commission merchant is required by Commission regulations to make certain firm specific disclosures and financial information publicly available on the futures commission merchant's Web site to assist the customer with his or her assessment and selection of a futures commission merchant. The firm specific disclosures are detailed in proposed paragraph (k) of § 1.55 and are discussed below. The Risk Disclosure Statement also must include the futures commission merchant's Web site address where the additional firm specific and financial information may be obtained by the customer.

The Commission is proposing the additional disclosures in response to the recent failures of MF Global and Peregrine. The Commission is concerned that the current Risk Disclosure Statement does not provide customers with adequate or complete information regarding the risks of engaging in trading through an FCM. Current disclosures in the Risk Disclosure Statement focus on the market risks of engaging in futures trading. However, the Commission understands that many of MF Global's former customers did not have adequate and meaningful information regarding the risks that their funds were exposed to beyond general market risks. Specifically, the Commission understands that some customers believed that their funds were covered by insurance or other protection. Some customers also believed that DCOs guaranteed customer funds in the event of a bankruptcy of an FCM.

The proposed additional disclosures in the Risk Disclosure Statement are intended to provide customers with a greater understanding of the risks of entrusting their funds with an FCM. This includes disclosures regarding the meaning and operation of the term ''segregation'' under the Act and Commission regulations. In addition, the Commission believes that customers will benefit from an awareness that FCMs may use affiliated entities to hold customer funds.

The Commission also is proposing that the Risk Disclosure Statement include a new provision that informs potential customers to the fact that additional firm specific disclosures and financial information about a particular FCM may be obtained from information maintained on each FCM's respective Web site. The content of the additional firm specific and financial disclosures are discussed below.

The Commission also is proposing to amend § 1.55, by adding new paragraphs (i) through (n) which will require an FCM to provide to each customer an additional disclosure document that will set forth firm specific information and address firm-specific risk factors to allow customers to have more information regarding the FCM and the risks associated with entrusting their funds to the FCM, or otherwise conducting business with or through the FCM (''Firm Specific Disclosure Document''). The additional risk information provided also will enable customers to make more meaningful judgments regarding the appropriateness of selecting an FCM by providing tools and information for the meaningful comparisons of business models and risks across FCMs. Such additional information will greatly enhance the due diligence that a customer can conduct both prior to opening an account and on an ongoing basis, as the proposal will require that the FCM update the risk disclosure information on a periodic basis. The Commission believes that the proposed Firm Specific Disclosure Document, coupled with the existing Risk Disclosure Statement, will provide customers with a more complete perspective regarding the risks of participating in the futures markets.

Under the proposal, in addition to providing general firm contact information, the Firm Specific Disclosure Document will contain the names, business contacts, and backgrounds for the FCM's senior management and members of the FCM's board of directors. The Firm Specific Disclosure Document also will include firm risk disclosures including: (1) A discussion of the significant types of business activities and product lines that the FCM engages in; (2) a discussion of the FCM's significant lines of business and the approximate amount of assets and capital devoted to each line of business; (3) a discussion of the material risks of the firm including the FCM's creditworthiness, leverage, capital and liquidity condition, and an explanation of how such risks may be material to customers that deposit funds for futures trading with the firm; and (4) a discussion of any material administrative, civil, criminal, or enforcement actions pending or any enforcement actions taken in the last three years.

The proposed Firm Specific Disclosure Document also will require each FCM to disclose firm specific information regarding its operations in the futures marketplace. An FCM will be required to disclose the name of the firm's DSRO, and to provide an overview of customer funds segregation protections and limitations, and how it manages its collateral management and investments. Each FCM also will be required to disclose the clearinghouses and carrying brokers that its uses to conduct its business, as well as its policies and procedures concerning the choice of depositories, custodians and counterparties.

The proposed Firm Specific Disclosure Document also will require the FCM to disclose certain financial and risk management information including the firm's total equity, regulatory capital, and net worth as of the most recent month end when the disclosure document is prepared. The FCM also is required to disclose information regarding: (1) The amount of the FCM's proprietary margin requirements as a percentage of the total segregated and secured funds that the FCM holds; (2) the number of customers that comprise 50 percent of the firm's total customer segregated and secured amount requirements; (3) the aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the FCM has entered; (4) the amount, generic source and purpose of any unsecured lines of credit (or similar short-term funding) the FCM has obtained but not yet drawn upon; (5) the aggregate amount of financing the FCM provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; (6) the percentage of customer receivables that the FCM had to write-off as uncollectable during the prior year compared to the current segregated and secured amount balances; and (7) a summary of the FCM's current risk practices, controls and procedures.

An FCM is obligated to update the Firm Specific Disclosure Document as necessary to keep the information accurate, but at least on an annual basis. An FCM also is required to make the Firm Specific Disclosure Document available to its customers and the general public on its Web site. An FCM may, however, use an alternative electronic means to make the Firm Specific Disclosure Document available to its customers provided that the electronic version is presented in a format that is readily communicated to its customers. The Proposal further provides that an FCM shall provide a paper copy of the Firm Specific Disclosure Document to a customer upon the customer's request.

The Commission also is proposing to amend § 1.55 to require each FCM to disclose on its Web site to the general public financial information that is publicly available under existing Commission regulations. Specifically, proposed paragraph (o) of § 1.55 will require each FCM to make available on its Web site the daily Segregation Schedule; the daily Secured Amount Schedule; and the daily Cleared Swaps Segregation Schedule. Each FCM will be required to maintain 12 months of the above segregation and secured schedules available on its Web site.

Proposed paragraph (o) also requires each FCM to disclose on its Web site a summary schedule of the firm's adjusted net capital, net capital, and excess net capital for the 12 most recent month-end dates. Each FCM also will be required to disclose on its Web site the following statements and schedules from the most current year end annual report that is certified by an independent public accountant in accordance with § 1.16: the Statement of Financial Condition; the Segregation Schedule; Secured Amount Schedule; the Cleared Swaps Segregation Schedule; and all footnotes related to the above statement and schedules.

The information that the proposal requires each FCM to disclose on its Web site is information that is currently publicly available under Commission regulations, or proposed by this rulemaking in the case of the Cleared Swaps Segregation Schedule, to be public information. Regulation 1.10(g) currently provides that the Segregation Schedules and Secured Amount Schedules contained in the monthly unaudited Forms 1–FR–FCM are public information. Regulation 1.10(g) further provides that the amounts of an FCM's adjusted net capital, minimum net capital requirement, and excess net capital as reported in the firm's unaudited monthly Form 1–FR–FCM are public information. Lastly, § 1.10(g) provides that the Statement of Financial Condition, Segregation Schedule, Secured Amount Schedule, and related footnote disclosures contained in an FCM's audited annual financial report are public documents.

The Commission also is proposing in paragraph (o) of § 1.55 to require each FCM to include a statement on its Web site that is available to the public that additional information, including information on how the FCM invests customer funds, may be obtained from the NFA. The FCM also is required to include a link on its Web site to the NFA web page which shows financial information for the FCM. Lastly, proposed paragraph (o) requires each FCM to include a statement regarding the Commission's reporting of select FCM financial information and a link to the Commission's Web site.

The Commission is proposing paragraph (o) as it believes that customers will make more informed choices regarding which FCMs to use to carry their account and to entrust their funds to if they have the opportunity to have access to FCM financial information. Requiring FCMs to make the information available to the public on their respective Web sites will allow customers and potential customers with a convenient method of obtaining and reviewing the information to assist with their selection process. Customers will have the ability to compare and contrast financial data from all FCMs to assist with the decision making process of determining which firms meet their criteria for holding their funds.

The Commission requests comment on all aspects of proposed amendments to § 1.55. Specifically, the Commission requests comment on the following:

- Do the existing and proposed disclosures required to be included in the Risk Disclosure Statement and Firm Specific Disclosure Document adequately convey to retail and/or institutional investors the market and firm specific risks of engaging in futures trading and the risks of using an FCM to execute trades on customers' behalf and to hold customers' funds? If not, how should the Risk Disclosure

Statement and Firm Specific Disclosure Document be amended?

• Are there other disclosures that the Commission should require to be included in Risk Disclosure Statement? If so, what are the additional disclosures and how would such disclosures benefit customers?

• Are there other disclosures that the Commission should require to be included in a Firm Specific Disclosure Document? If so, what are the additional disclosures and how would such disclosures benefit customers?

• Are the proposed additional firm-specific disclosures too broad? If so, how should the Commission refine the disclosures to be more specific, yet provide the type of information that the Commission would like customers to receive?

• The Commission is proposing to require an FCM to disclose in the Firm Specific Disclosure Document the number of customers that comprise 50 percent of the FCM's customer fund balances for futures customers, Cleared Swaps Customers, and 30.7 Customers. Should the Commission consider additional or different percentages? If so, what should the percentages be and why?

• The Commission requests comment on how the new or revised Risk Disclosure Statement and Disclosure Documents should be provided to existing customers. Should FCMs be required to obtain new signature acknowledgments from existing customers for a revised Risk Disclosure Statement? How should existing customers be informed of the new Firm Specific Disclosure Statement? How can the Commission be assured that all existing customers have been informed of the new disclosure documents, and the availability of the FCM financial data?

• If FCMs are required to provide existing customers with new Risk Disclosure Statements, how should Commission address the implementation of the requirement? What would be an adequate period of time for FCMs to obtain new acknowledgment from existing customers?

Q. Proposed Amendments to Part 22

The Commission recently adopted final regulations in Part 22 implementing the provisions of the Dodd Frank Act that provide for the protection of Cleared Swaps Customer contracts and collateral.[81] Although substantive differences in the segregation regimes between futures and cleared swaps at the clearing level exist under the final Part 22 regulations as adopted, requirements with respect to collateral which is not posted to clearinghouses and maintained by FCMs for Cleared Swaps Customers replicate or incorporate by reference the same regulatory requirements applicable to the segregation of futures customer funds under section 4d(a)(2) of the Act (for example, holding funds separate and apart from proprietary funds, limitations on the FCM's use of customer funds, titling of depository accounts, Acknowledgment Letter from depository requirements, and limitations on investment of swap customers' funds are currently contained in Part 22 regulations).

The determination that appropriate enhancements are necessary with respect to the regulatory requirements discussed above for segregated futures customer funds under section 4d(a)(2) of the Act is equally applicable to Cleared Swaps Customer Collateral. The written policies and procedures requirements proposed in § 1.11 would be applicable to Cleared Swaps Customer Collateral, the new withdrawal limitations requirements proposed in § 1.23 are proposed to be replicated in a new § 22.17, and the changes to the daily segregation calculations and filing of such calculations, as well as requirements for detailed depository and investment information, are proposed to apply to Cleared Swaps Customer funds through proposed amendments to § 22.2(g). In addition, changes discussed above regarding § 1.17 with respect to securities haircuts are also proposed with respect to § 22.2(f), which similarly incorporates by reference the applicable SEC securities haircuts. Finally, the proposed § 1.20(i) requirement that an FCM maintain residual interest in segregated accounts in an amount that exceeds the sum of all futures customers' margin deficits is also proposed with respect to Cleared Swaps. As stated above, this requirement provides a clear mechanism for demonstrating FCM compliance with the prohibition under the Act and existing Commission regulations on using the collateral of one Cleared Swaps Customer to support the obligations of another Cleared Swaps Customer.

R. Amendments to § 1.3: Definitions; and § 30.7: Treatment of Foreign Futures or Foreign Options Secured Amount

Part 30 of the Commission's regulations were adopted in 1987 and govern trading on foreign futures markets.[82] Regulation 30.7 requires an FCM to set aside in separate accounts for the benefit of its foreign futures or foreign options customers an amount of funds defined as the ''foreign futures or foreign options secured amount.'' The term ''foreign futures or foreign options secured amount'' is defined in § 1.3(rr) as the amount of funds necessary to margin the foreign futures or foreign options positions held by the FCM for its foreign futures or foreign options customers, plus or minus any gains or losses on such open positions. The calculation of the foreign futures or foreign options secured amount is referred to as the ''Alternative Method.''

Foreign futures or foreign options customers receive substantially less protection for their account deposits under the Alternative Method than futures customers receive for their account deposits under section 4d(a)(2) of the Act and Commission regulations. Section 4d(a)(2) of the Act and Commission regulations require an FCM to segregate in separate accounts sufficient funds to satisfy the full account equities of all of its futures customers trading on designated contract markets *(i.e.,* the Net Liquidating Equity Method). The regulatory objective of the Net Liquidating Equity Method is to ensure that an FCM has sufficient funds in segregated accounts to cover the full account equities of all of its futures customers. This would allow the FCM to transfer the futures customers' positions and margin collateral in the event of the insolvency of the FCM to another firm that was financial sound. If the FCM does not maintain sufficient funds in segregation to cover the full account equities, the futures customers may not be able to be transferred to another FCM, or the futures customers may be required to deposit margin funds with the transferee FCM to adequately margin the positions.

In contrast, the Alternative Method only obligates an FCM to set aside an amount of funds in separate accounts sufficient to cover the margin required on open foreign futures and foreign options positions, plus or minus any unrealized gains or losses on such positions. Any funds deposited by foreign futures or foreign options customers in excess of the required amount to be set aside in separate accounts under the Alternative Method may be held by the FCM in operating cash accounts and may be used by the FCM as if it were its own capital. Therefore, an FCM is not required to set aside in separate accounts a sufficient

[81] 77 FR 6336 (February 7, 2012).

[82] 52 FR 28980 (Aug. 5, 1987).

amount funds to repay the full account balances of each of its foreign futures or foreign options customers, and, in the event of an FCM insolvency, the foreign futures or foreign options customers may not recover 100 percent of the value of their accounts or be able to transfer their positions to another FCM.

The Commission is proposing to amend the Part 30 regulations to eliminate the Alternative Method and to require FCMs to use the Net Liquidating Equity Method to compute the amount of funds they must set aside in separate accounts for the benefit of its foreign futures or foreign options customers. The amount of funds held for foreign futures and foreign options customers has grown dramatically in the last 10 years. FCMs held approximately $36.4 billion for foreign futures or foreign options customers as of June 30, 2012, compared to a total of $7.9 billion held as of March 31, 2002 (an approximate 470 percent increase).[83] In addition, the amount of funds held by FCMs for foreign futures or foreign options customers has increased relative to the amount of segregated funds held by FCMs during the last 10 years. Funds held for foreign futures or foreign options customers represented approximately 13 percent of the total customer funds held by FCMs as of March 31, 2002, and represented approximately 21 percent of total customer funds as of June 30, 2012.[84]

Accordingly, the Commission is proposing to amend § 1.3(rr) to define the term ''foreign futures or foreign options secured amount'' to mean the amount of funds an FCM needs to satisfy the full account balances of each 30.7 Customer at all times (i.e., the Net Liquidating Equity Method).

The term ''30.7 Customer'' is proposed to be defined in § 30.1 to mean both U.S.-domiciled customers and foreign-domiciled customers trading foreign futures or foreign options. As originally adopted, FCMs were only required to hold funds for U.S.-domiciled customers. The Net Liquidating Equity Method will require the FCM to set aside a sufficient amount of funds in secured accounts to repay the total account balances of all of its 30.7 Customers, which will align the requirement with the segregation requirements for both futures customers and Cleared Swaps Customers. The proposed amendments will significantly enhance the protection afforded to funds deposited by customers trading on foreign markets.

The Commission also is proposing to substantively revise the regulations governing an FCM's holding of funds deposited by a customer for trading on foreign futures markets. The proposed amendments to the foreign futures or foreign options secured amount requirement establish many of the regulatory requirements that currently exist, or are proposed to be adopted under this rulemaking, with regard to segregated funds deposited by customers trading on a designated contract market under Part 1 and deposited by Cleared Swaps Customers under Part 22 of the Commission's Regulations.

Regulation 30.7(a) requires an FCM to set aside in separate accounts sufficient funds to meet its current obligations to foreign futures or foreign option customers denominated as the ''foreign futures or foreign options secured amount.'' The term ''foreign futures or foreign options customer'' is defined in § 30.1 to mean any person located in the United States, its territories, or possessions. The term ''foreign futures or foreign options secured amount'' is defined at § 1.3(rr) and means an amount of money, securities, or other property sufficient to margin, guarantee, or secure open foreign futures contracts plus any unrealized gains or losses on such contracts, and any money securities or property representing premiums paid or received, and any other funds necessary to guarantee or secure, open foreign option transactions (*i.e.,* the Alternative Method of computing the secured amount requirement). Thus, an FCM is not required to set aside in separate accounts all funds deposited by or otherwise belonging to foreign futures or foreign option customers. Funds deposited by foreign futures or foreign options customers that exceed the foreign futures or foreign options secured amount may be commingled with the FCM's proprietary funds and used by the FCM as part of its business capital.

In addition, § 30.7(b) requires only that an FCM set aside the required margin funds for foreign futures customers that are located within the United States, its territories, or possessions. Regulation 30.7 permits the FCM to include foreign futures customers that are located outside of the United States, but the FCM is not obligated to include such foreign-domiciled customers.

Furthermore, Commission staff previously issued guidance to FCMs stating that an FCM could carry positions other than foreign futures and foreign option positions in foreign futures or foreign options customers' accounts. Thus, FCMs could commingle and carry customers' non-foreign futures positions, such as foreign currency positions and over-the-counter positions, in such customers' foreign futures or foreign options account.

The intent of the following amendments is to align the regulatory approach and customer protections by raising the requirements for foreign futures or foreign options secured amount to make it consistent with the FCM's segregation requirements for customers trading on designated contract market or engaging in cleared swap transactions.

As stated above, the Commission is proposing to require FCMs to compute the foreign futures or foreign options secured amount using the Net Liquidating Equity Method by amending the definition in § 1.3(rr) of the term ''foreign futures or foreign options secured amount'' to match structurally the definition in § 1.3(gg) of the term ''customer funds,'' which encompasses the Net Liquidating Equity Method of computing the amount of funds an FCM is required to maintain in customer segregated accounts. Specifically, the proposed definition of the term ''foreign futures or foreign options secured amount'' would be amended to mean all money, securities and property received by an FCM for, or on behalf of, ''30.7 Customers'' to margin, guarantee, or secure foreign futures contracts and foreign option transactions, and all funds accruing to ''30.7 Customers'' as a result of such foreign futures and foreign options transactions. The term ''30.7 Customer'' is proposed to be defined in § 30.1 to mean any person, whether domiciled within or outside of the United States, that engages in foreign futures or foreign options transactions through the FCM.

Requiring an FCM to set aside in separate accounts the funds deposited by both domestic and foreign-domiciled customers provides comparable customer protections to customers notwithstanding their place of domicile. In addition, requiring the FCM to hold U.S.-domiciled and foreign-domiciled customer funds in separate accounts under § 30.7 ensures that such customers receive equal protections in the event of the bankruptcy of the firm. Part 190 of the Commission's regulations and the U.S. Bankruptcy Code[85] provide that in the event of a commodity broker bankruptcy liquidation, customers in the account

[83] The total amount of customer funds held by FCMs is available on the Commission's Web site at *http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm.*

[84] Id.

[85] *See* 11 U.S.C. 761–766.

class entitled to a preference to the amounts in set-aside accounts for customers trading on foreign boards of trade include both U.S.-domiciled and foreign-domiciled customers.[86] The Commission is proposing to require funds to be set aside equally for U.S.-domiciled and foreign-domiciled customers trading on foreign boards of trade in the computation under § 30.7 by establishing a new definition of 30.7 Customers that includes existing foreign futures or foreign options customers (which are U.S.-domiciled persons trading foreign futures or foreign options) as well as any foreign-domiciled persons trading foreign futures or foreign options through the registered FCM. The secured amount definition, as proposed to be amended in § 1.3(rr), will reference ''30.7 Customers'' instead of ''foreign futures or foreign options customers,'' to ensure FCMs are required to set aside funds equal to the net liquidating equity of all such persons. Combined with the proposed amendment to require net liquidating equity, this should result in at all times an amount required to be set aside for all persons equal to the amount owed to such persons that would share in the account class for foreign futures in a commodity broker liquidation. The Commission is also proposing amendments in § 1.10 and § 1.17 to reference ''30.7 Customers'' instead of foreign futures or foreign options customers in the title of the schedules prepared by an FCM.

In addition, the Commission is proposing to add language to § 30.7(a) to provide an equivalent offset to that available in the futures customer segregation calculation under § 1.32(b) for deficits in accounts secured by securities, subject to language updating the reference to applying securities haircuts in calculating the offset as discussed in Section II.F above. The result of these amendments as discussed should be accord between the methodologies applied in the 4d segregation calculation and the § 30.7 calculation.

Consistent with proposed changes in § 1.20(i) and Part 22, the Commission also is proposing to add language to § 30.7(a) to provide that an FCM must hold residual interest in accounts set aside for the benefit of 30.7 Customers equal to the sum of all margin deficits for such accounts, to provide an equivalent clear mechanism for ensuring that the funds of one 30.7 Customer are not margining or guaranteeing the positions of another 30.7 Customer. Although this prohibition is not specified in the Act as it is with respect for futures customers and Cleared Swaps Customers, the Commission is proposing to the extent possible to replicate wherever practical and advisable customer protection provisions for futures customers and Cleared Swaps Customers to 30.7 Customers. As a result, most of the amendments proposed earlier in various provisions for these customers also are being proposed in § 30.7.

The Commission requests comment on the proposed amendments to § 30.7(a).

Proposed paragraph (b) of § 30.7 sets forth the permitted depositories for holding 30.7 Customer funds. The proposal does not alter the list of depositories that are currently permitted under § 30.7 to hold 30.7 Customers' funds: (1) A bank or trust company located in the United States; (2) a bank or trust company located outside of the United States that maintains in excess of $ 1 billion of regulatory capital; (3) an FCM registered with the Commission; (4) a DCO; (5) the clearing organization of a foreign board of trade; (6) a member of a foreign board of trade; and (7) the depositories used by the clearing organization of a foreign board of trade or a member of a foreign board of trade.

Proposed § 30.7(c) would limit the amount of 30.7 Customers' funds that an FCM could hold in non-U.S. jurisdictions. Under the proposal, an FCM must hold 30.7 Customer funds in the United States, except to the extent that the funds held outside of the United States are necessary to margin, guarantee, or secure (including any prefunding obligations) the foreign futures or foreign options positions of an FCM's 30.7 Customers. The Commission also is proposing to allow an FCM to deposit additional 30.7 Customer Funds equal to 10 percent of the total amount of funds required to be held by non-U.S. brokers or foreign clearing organizations for 30.7 Customers as a cushion to the required margin requirements, so that the FCM has a certain degree of flexibility in managing its daily cash movements and to ensure that the foreign futures or foreign options positions are not undermargined at foreign brokers or clearing organizations. The Commission recognizes that due to differences in time zones, trading hours, banking holidays, as well needs for cash transfers to foreign jurisdictions to settle and to be credited to accounts, a customer may not be able to immediately transfer funds to its FCM, and an FCM may not be able to immediately transfer funds to a foreign broker or foreign clearing organization to meet a margin call. The proposed cushion is intended to provide an FCM with sufficient flexibility to meet its customers' trading obligations on foreign markets, while also requiring as much of the total 30.7 Customer funds to be held within the United States in order to minimize the impact of the repatriation risk in the event of an FCM insolvency.

The Commission previously proposed changes to the form of the Acknowledgment Letter required from depositories holding funds set aside as the foreign futures or foreign options secured amount.[87] The Commission here re-proposes in a revised paragraph (d) to § 30.7 the requirements for obtaining and submitting Acknowledgment Letters for § 30.7 accounts, which proposed changes include further revised template forms of Acknowledgment Letter included as Appendices E and F. The proposed template forms, in addition to incorporating earlier proposed changes previously summarized with respect to the § 1.20 Acknowledgment Letters, have been further revised to include a depository's agreement to provide read-only account access to Commission or DSRO staff, in order for Commission or DSRO staff to directly verify balances as necessary. The Commission is also proposing subparagraphs (3), (4) and (5) of § 30.7(d), which substantively require 24 hour a day direct read-only electronic access to the depository account by the Commission and the DSRO, require the depository to file the written Acknowledgment Letter directly with the Commission and the FCM's DSRO, and require the depository to provide confirmations to the Commission and the FCM's DSRO directly upon request. The Commission requests comment on the revised requirements for Acknowledgment Letters for § 30.7 accounts as proposed in paragraph (d) and the new template forms of the Acknowledgment Letters proposed in Appendices E and F.

As part of its participation in the public roundtable discussed in the Background section above, FIA recommended that the Commission eliminate the ability of FCMs to commingle funds from unregulated

[86] *Id.* By definition, ''foreign future'' under section 761 of the Bankruptcy Code is not limited to transactions entered on foreign boards of trade on behalf of U.S. domiciled persons, and ''customer'' is not limited to U.S. domiciled persons. The result is that by the application of these definitions a preferential account class at a commodity broker for customers trading foreign futures would not be limited to U.S. domiciled customers.

[87] *See* Acknowledgment Letters for Customer Funds and Secured Amount Funds, 75 FR 47738 (Aug. 9, 2010).

transactions with funds for foreign futures and options trading in Part 30 set aside accounts, except by Commission order, as is the case under 4d(a)(2) of the Act for segregated funds. The Commission agrees with this recommendation. The comments cited in the release adopting Part 30 with respect to back office operational difficulties of establishing multiple ''customer'' origins were persuasive at the time Part 30 was adopted.[88] With the technological changes of intervening decades, however, these concerns should no longer dictate the advisability of commingling the funds of regulated foreign futures and foreign options transactions with unregulated transactions. Therefore, the Commission is proposing to amend § 30.7 by adopting new paragraph (e), which will extend the prohibition against commingling to any funds of account holders of an FCM unrelated to trading foreign futures or foreign options, except as the Commission shall by order permit, under terms and conditions as specified. Should there be a need to permit commingling of funds, the Commission will continue to have the ability to permit such commingling under the formalities of processes associated with a Commission order. The Commission requests comment on this proposed amendment to § 30.7(e).

The Commission has proposed to adopt a new paragraph (f) and a new paragraph (k) in § 30.7, to extend regulatory provisions from §§ 1.20, 1.21, 1.22 and 1.24, that previously were applicable only to 4d segregated funds, to funds set aside as the foreign futures or foreign options secured amount under § 30.7. The Commission requests comment on replicating these regulatory requirements applicable to segregated funds to funds set aside as the foreign futures or foreign options secured amount. These proposed requirements would make clear that FCMs would not be permitted to use funds set aside as the foreign futures or foreign options secured amount other than for the benefit of 30.7 Customers, and that funds set aside as the foreign futures or foreign options secured amount should not be invested in any obligations of clearing organizations or boards of trade, and that further, no funds placed at foreign brokers should be included as funds set aside as the foreign futures or foreign options secured amount unless those funds are on deposit to margin the foreign futures or foreign options trading of 30.7 Customers. In addition to extending these existing Commission regulations to § 30.7 in proposed paragraphs (f) and (k), the Commission is also proposing a new requirement prohibiting a FCM from imposing any liens or allowing any liens to be imposed on funds set aside as the foreign futures or foreign options secured amount. The Commission has previously adopted a lien prohibition with respect to the segregation of Cleared Swaps Customer collateral at § 22.2(d)(2) and therefore proposes to extend this lien prohibition to funds set aside as the foreign futures or foreign options secured amount in § 30.7. The Commission requests comment on the proposed amendments providing limitations on use and permitted withdrawals as contained in §§ 30.7(f) and (k).

As discussed in Section II.I above, the Commission has proposed new limitations on withdrawals of segregated funds in § 1.23. The proposed amendments provide for an FCM's residual interest in segregated funds, and permits withdrawals from segregated funds for the proprietary use of the FCM to the extent of such residual interest, subject to the requirement that the withdrawal must not occur prior to the completion of the daily segregation computation for the prior day, and should the withdrawal (individually or aggregated with other withdrawals) exceed 25 percent of the prior day residual interest, the withdrawal must be subject to specific approvals by senior management and appropriately documented, and further subject to a complete prohibition on withdrawals of residual interest to the extent of margin deficits. The Commission has proposed paragraph (g) of § 30.7 to apply the same restrictions on withdrawals of an FCM's residual interest in funds set aside as the foreign futures or foreign options secured amount. The Commission requests comment on proposed paragraph (g) of § 30.7.

Regulation 30.7(g) was recently adopted by the Commission to provide that the investment of § 30.7 funds be subject to the investment limitations contained in § 1.25.[89] The Commission is proposing to now move this permitted investment requirement to a new paragraph § 30.7(h), and further to adopt a new paragraph § 30.7(i), which makes clear that FCMs are solely responsible for any losses resulting from the permitted investment of funds set aside as the foreign futures or foreign options secured amount. The new paragraph § 30.7(i) is intended to apply the same standard as is being proposed in the amendment to § 1.29 for segregated funds discussed above. The Commission is also requesting comment on whether the investment of 30.7 property should be restricted in cases of jurisdictions where client asset protection of such property cannot be assured? If so, what assurances should be required? For example, in cases of jurisdictions where client asset protections can be waived, should the Commission require that the Commission or a DSRO be practicably able to audit for evidence of such waiver? What are the relevant costs and benefits of adopting any of these alternatives?

The Commission also is proposing in an amended paragraph (j) to § 30.7 to clarify the circumstances under which an FCM may make secured loans to 30.7 Customers and to adopt the same restriction on unsecured lending to 30.7 Customers as has been proposed with respect to futures customers and 4d segregated funds in the proposed amendment to § 1.30 discussed above. The Commission requests comment on applying this restriction in relation to 30.7 Customers.

Finally, the Commission is proposing an amended paragraph (l) to § 30.7 to require the daily computation of the foreign futures or foreign options secured amount and the filing of such daily computation with the Commission and DSROs, as well as to require the FCM to provide investment detail of the foreign futures or foreign options secured amount as of the middle and end of the month. The proposed amendments to paragraph (l) of § 30.7 are intended to be consistent with the requirements for the daily segregation calculation for segregated customer funds and the provision of the segregation investment detail which are proposed in § 1.32. The Commission requests comment on the proposed changes requiring the filing of the daily secured amount computation and the investment detail as proposed in § 30.7(l).

III. Consideration of Costs and Benefits

The misuse or mishandling of customer funds at specific FCMs like MF Global or Peregrine not only imposes a burden on those customers whose funds have been misused, but also creates a burden to the public by eroding the trust of the American public in all market intermediaries. This loss of trust could deter market participants from the benefits of using regulated, transparent markets and clearing. The overarching purpose of this rule is to provide regulators the means by which to detect and deter the misuse or mishandling of customer funds by FCMs in order to produce the benefits that

[88] *See* 52 FR 28980 at 28985–28986.

[89] 76 FR 78776 at 78802 (December 19, 2011).

accrue by virtue of avoiding similar defaults in the future and to prevent the costs, including lost customer funds, decreased market liquidity that follows from a crisis in confidence, and the potential for the failure of one FCM to cause instability in other clearing members.[90]

The Commission's proposal builds on recent efforts by the Commission and industry to better protect customer funds. As discussed above in section I.D., in December 2011 the Commission amended § 1.25 of its regulations to eliminate certain options for the permissible investments of customer funds.[91] Two months later, the Commission approved a margin rule for cleared swap transactions referred to as ''LSOC'' (legal separation with operational commingling) in which each swaps customer's collateral is protected individually all the way to the clearinghouse.[92] The Commission also convened a roundtable in late February 2012 to discuss what amendments should be made to Commission regulations in order to provide additional protection to customer funds. Further, in June 2012, the Commission finalized rules for DCMs and included amendments to § 1.52 which codify staff guidance on minimum requirements for SROs regarding their financial surveillance of FCMs.[93] With the recent default of another FCM, Peregrine, the Commission held two additional roundtables to discuss, among other things, technological approaches to mitigating the risk of fraud, and possible amendments to the Commission's rules regarding protection of customer funds.[94]

In this rulemaking, the Commission is proposing amendments to improve the protection of customer funds. The content of the Commission's proposal can be categorized in seven parts: (1) Requiring FCMs to implement extensive risk management programs including written policies and procedures related to various aspects of their handling of customer funds; (2) increasing reporting requirements for FCMs related to segregated customer funds, including daily reports to the Commission and DSRO; (3) requiring FCMs to establish target amounts of residual interest to be maintained in segregated accounts as well as creating restrictions and increased oversight for FCM withdrawals out of such residual interest in customer segregated accounts, specifically including clear sign off and accountability from senior management for such withdrawals; (4) strengthening requirements for the acknowledgment letters that FCMs and DCOs must obtain from their depositories; (5) eliminating the Alternative Method for calculating 30.7 Customer funds segregation requirements and requiring FCMs to include foreign investors' funds in segregated accounts; (6) strengthening the regulatory requirements applicable to SRO and DSRO oversight of FCMs, including regulating oversight provided under the function of a Joint Audit Committee that would establish standards for, and oversee the execution of, FCM audits; and (7) requiring FCMs to provide additional disclosures to investors.

Statutory Mandate To Consider the Costs and Benefits of the Commission's Action: Commodity Exchange Act Section 15(a)

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

There are four considerations relevant to this proposal. These are: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) sound risk management practices; and (4) other public interest considerations. The Commission proposes that the amendments would not have any effect on price discovery.

In the discussion that follows, the Commission provides an overview of the proposed rules in light of the three relevant 15(a) cost-benefit considerations previously identified, and then considers the costs and benefits of each section individually in light of the same 15(a) public interest considerations. The Commission concludes with additional requests for public comment on all aspects of its preliminary consideration of the costs and benefits of the rule proposals.

Overview of the Costs and Benefits of the Proposed Rules and Amendments in Light of the 15(a) Considerations

Protection of Market Participants and the Public

As stated above, the Commission is proposing amendments to improve protection of customer funds. Each of the seven parts of the proposal[95] would increase levels of protection for customer funds. Requiring FCMs to implement risk management programs that include documented policies and procedures regarding various aspects of handling customer funds would help protect customer funds by promoting robust internal risk controls and reducing the likelihood of errors or fraud that could jeopardize customer funds. In addition, by requiring each FCM to document certain policies and procedures, the proposed rules would enable the Commission, DSROs, and

[90] The failure of one clearing member could lead to instability in other clearing members if the losses due to the first member's failure are large enough to exhaust the guarantee fund and require additional capital infusion from other clearing members.

[91] In the final rule amending § 1.25, the Commission stated, ''the Commission is narrowing the scope of investment choices in order to eliminate the potential use of portfolios of instruments that may pose an unacceptable level of risk to customer funds.'' *See* ''Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions,'' 76 FR 78776, December 19, 2011.

[92] 77 FR 6336 (Feb. 7, 2012) (Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions).

[93] 77 FR 36612 (June 19, 2012) (Core Principles and Other Requirements for Designated Contract Markets).

[94] Public Meeting of the Technology Advisory Committee, July 26, 2012. *See http://www.cftc.gov/PressRoom/Events/opaevent_tac072612.* Public Roundtable to Discuss Additional Customer Protections, August 9, 2012. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff080912.*

[95] The seven parts of the proposal are: (1) Requiring FCMs to implement risk management programs including extensive written policies and procedures related to various aspects of their handling of customer funds; (2) increasing reporting requirements for FCMs related to segregated customer funds, including daily reports to the Commission and DSROs; (3) requiring FCMs to establish target amounts of residual interest to be maintained in segregated accounts as well as creating restrictions and increased oversight for FCM withdrawals out of such residual interest in customer segregated accounts, including clear sign off and accountability from senior management for such withdrawals; (4) strengthening requirements for the acknowledgment letters that FCMs and DCOs must obtain from their depositories; (5) eliminating the Alternative Method for calculating 30.7 Customer funds segregation requirements and requiring FCMs to include foreign-domiciled customers' funds in segregated accounts; (6) strengthening the regulatory requirements applicable to SRO and DSRO oversight of FCMs, including regulating oversight provided under the function of a Joint Audit Committee (Joint Audit Program) that would establish standards for, and oversee the execution of, FCM audits; and (7) requiring FCMs to provide additional disclosures to investors.

other auditors to evaluate each FCM's compliance with their own policies and procedures. Moreover, the proposed requirement that FCMs establish a program for quarterly audits by independent or external people that is designed to identify any breach of the policies and procedures would help to ensure regular, independent validation that the procedures are followed diligently. Audits of this sort provide more thorough review of internal procedures than the Commission or DSROs would be able to perform regularly with existing resources, which would provide helpful scrutiny of each FCM's procedures on a regular basis. This, together with the proposed requirement that FCMs establish a program of governing supervision that is designed to ensure the policies required in § 1.11 are followed, will tend to promote compliance with the FCM's own policies and procedures. And by promoting such compliance, the requirements would reduce the risk of operational errors, lax risk management, and fraud, and thus the risk of consequent loss of customer funds.

Increasing reporting requirements for FCMs related to segregated customer funds would help the Commission and DSRO identify FCMs that should be monitored more closely in order to safeguard customer funds. Moreover, by making some additional reported information public, the proposed rules would facilitate additional market discipline that further promotes protection of customer funds.

Creating restrictions and increased oversight for FCM withdrawals out of its residual interest in customer segregated accounts, and requiring sign off from senior management for large withdrawals would protect customers by helping to ensure that such withdrawals do not cause segregated account balances to drop below their segregation requirements. Moreover, it would promote effective oversight of customer segregated accounts by senior management by increasing their accountability for withdrawals that affect the balance of such accounts.

The acknowledgments and commitments depositories would be required to make through proposed §§ 1.20, 1.26, and 30.7 would provide additional protection for customer funds by, among other things, requiring depositories that accept customer funds to acknowledge that customer funds cannot be used to secure the FCM's obligations to the depository. Such an acknowledgment would provide additional protection of customer funds in the event of an FCM's default. In addition, depositories would agree in the acknowledgment letter to give the Commission and DSROs read-only electronic access to an FCM's segregated accounts, which would benefit customers by enabling the Commission and DSROs to monitor the accounts for discrepancies between the FCM's reports and the balances on deposit at various depositories. This would provide an additional mechanism by which customers would be protected against a shortfall in customer funds due to operational errors or fraud.

Requiring FCMs to include foreign-domiciled investors' funds in segregated accounts ensures that all customers placing funds on deposit for use in trading foreign futures and foreign options will benefit from the same protections provided by the Act and Commission regulations. As discussed below, the Commission understands that most, if not all FCMs currently extend the same protections to U.S.-domiciled and to foreign-domiciled customers. However, incorporating foreign-domiciled customers within the protections provided to 30.7 Customers places regulatory weight behind the protections and ensures that FCMs are not permitted to cut corners with respect to protecting foreign-domiciled customers' funds during a time of financial strain. Similarly, eliminating the Alternative Method provides additional protection to customer funds by ensuring that FCMs are not allowed to reduce their segregation requirements for 30.7 Accounts during a time financial strain. As discussed below, this change would provide protection to both U.S-domiciled and foreign-domiciled customers with funds in 30.7 Accounts.

The proposed provisions in § 1.52 include additional requirements for both the supervisory program for SROs as well as for the formation of a Joint Audit Committee to oversee the implementation and operation of a Joint Audit Program that directs audits of FCMs by DSROs. By requiring both the SRO supervisory programs and the Joint Audit Program to comply with U.S. generally accepted audit standards, to develop written policies and procedures, to require controls testing as well as substantive testing, and to have an examinations expert review the programs at least once every two years, the proposed amendments would help to ensure that audits of FCMs by SROs or DSROs are thorough, effective, and continue to incorporate emerging best practices for such audits. As a consequence, the proposed amendments would help to ensure that audits are as effective as possible at identifying potential fraud, strengthening internal controls, and verifying the integrity of FCMs' financial reports, each of which tend to provide protection for FCMs' customers, counterparties, and investors.

In addition the proposed § 1.55 would require disclosure of firm-specific risks to customers. This additional information would assist them with due diligence when selecting an FCM and would help to ensure that they are aware of any changes at the FCM that could prompt them to reconsider their decision to deposit funds with the FCM. In doing so, the proposed rules would promote market discipline that incents FCMs to manage their risks carefully and would assist customers in understanding how their funds are held and what risks may be relevant to the safety of their funds.

Efficiency, Competitiveness and Financial Integrity of Futures Markets

The proposed amendments would increase the efficiency and financial integrity of the futures markets by ensuring that FCMs have strong risk management controls that are subject to multiple and enhanced external checks, by enhancing reporting requirements, facilitating increased oversight by the Commission and DSROs, by allowing FCMs flexibility in the development of newly required policies and procedures wherever the Commission has determined that such flexibility is appropriate, and by requiring FCMs to implement training regarding the handling of customer funds. In addition, the proposed rules include some requirements that many industry participants have requested as necessary for the adequate protection of customers and also highlighted as best practices already adopted within the industry. Requiring such standards to be adopted by all FCMs will promote the competitiveness of futures markets by ensuring a level playing field at a minimum level necessary for the protection of customers, and not allowing any FCMs to, at the expense of customers, maintain an unfair competitive advantage to their counterparts who utilize best practices and may have such protections already in place. There are also provisions in the proposal that permit FCMs that are not broker-dealers to implement certain securities net capital haircuts that have been proposed to apply to jointly registered FCM/BDs by the SEC, which similarly enhances competition by keeping a level playing field between sole FCMs and jointly registered FCM/BDs with respect to such requirements.

More specifically, the proposed amendments to §§ 1.10, 1.11, 1.12, 1.32,

22.2, and 30.7 would increase reporting requirements for FCMs related to segregated customer funds, including daily, bi-monthly, and additional event-triggered reports to the Commission and DSROs. The expanded range and frequency of information that the Commission and DSRO would receive under the proposed regulations would enhance their ability to monitor each FCM's segregated accounts, which would promote the integrity of futures markets by helping to ensure proper handling of customer funds at FCMs.

In addition, the proposed changes would facilitate increased oversight by the Commission and DSROs by including additional notification requirements, obligating FCMs to alert the Commission when certain events occur that could indicate an FCM's financial strength is deteriorating or that important operational errors have occurred. Such notifications would enable the Commission and DSROs to increase monitoring of such FCMs to ensure that customer funds are handled properly in such circumstances. The proposed rules would also require FCMs and DCOs to obtain an acknowledgment letter from depositories that would give the Commission and DSROs electronic access to view customer accounts at each depository. That would enable both the Commission and DSROs to verify the presence of customer funds which would provide a safeguard against fraud and would promote the integrity of markets for futures, cleared options, and cleared swaps.

The proposed rules would also require FCMs to establish policies and procedures regarding several aspects of how they handle customer funds. The rules would give FCMs the flexibility, where appropriate, to develop policies and procedures tailored to the unique composition of their customer base, size, and other operational disincentives. This flexible approach protects FCMs from additional regulatory compliance costs that could otherwise result from rules requiring every FCM to operate in exactly the same way without sacrificing the additional accountability that results from written policies and procedures that the Commission or DSRO can review and use as the basis for FCM audits.

The proposed requirement that FCMs would provide annual training to all finance, treasury, operations, regulatory, compliance, settlement and other relevant employees regarding the segregation requirements for segregated funds, for notices under § 1.12, procedures for reporting non-compliance, and the consequences of failing to comply with requirements for segregated funds, would enhance the integrity of the futures markets by promoting a culture of compliance by the FCM's personnel. The training would help to ensure that FCM employees understand the relevant policies and procedures, that they are empowered and incented to abide by them, and that they know how to report non-compliance to appropriate authorities.

Last, the proposing form of the rule would allow FCMs that are not dual registrants *(i.e.,* are not both FCMs and BDs) to follow the same procedures as dual registrants when determining what regulatory capital haircut applies to certain types of securities in which the FCM invests its own capital or customer funds. This proposed change is needed as the SEC has proposed a change for broker-dealers which would permit joint registrants to possibly apply a lower regulatory haircut for certain securities, but which would not be applicable to sole FCMs without the proposal. Therefore, the proposal would ensure that sole FCMs are not competitively disadvantaged and are able to continue applying the same regulatory capital haircuts for such securities as joint registrants.

Sound Risk Management

The amendments proposed here, if adopted, would promote sound risk management by facilitating market discipline, enhancing internal controls, enabling the Commission and DSROs to monitor FCMs for compliance with those controls, by minimizing the risk that an FCM's financial strain could interfere with customers' ability to manage their positions, by requiring FCMs to notify the Commission in additional circumstances that could indicate emerging financial strain, and by requiring senior management to be involved in the process of setting targets for residual interest.

The proposed reporting requirements would enhance market discipline by providing additional information to investors regarding the location of their funds, and the size of residual interest buffer that an FCM targets and maintains in its segregated accounts. This additional information would be valuable to customers selecting an FCM and monitoring the location of their funds deposited with the FCM which would promote market discipline. For example, if an FCM were to establish a low target for residual interest, or maintain a very low residual interest, market participants would likely recognize this as a practice that could increase risk to the funds they have on deposit at the FCM, and would likely either apply pressure to the FCM to raise their target, or take their business to a different FCM that maintains a larger residual interest in customer fund accounts. This market discipline would incent FCMs to maintain a level of residual interest that is adequate to ensure that a shortfall does not develop in the customer segregated accounts.

The proposed rules would also enhance FCM internal controls by requiring them to establish a risk management program that includes policies and procedures related to various aspects of how segregated customer funds are handled. For example, FCMs would be required to establish procedures for continual monitoring of depositories where segregated customer funds are held, and would have to establish a process for evaluating the marketability, liquidity, and accuracy of pricing for § 1.25 compliant investments.

In addition, documented policies and procedures would benefit the FCM customers and the public by providing the Commission and DSROs greater ability to monitor and enforce procedures that FCMs perform to ensure that the protection of customer funds is achieved, with the effect that the Commission would have a greater ability to address and protect against operational errors and fraud that put customer funds at risk of loss.

Further, through the proposed amendments to § 1.17(a)(4), FCMs will need to manage their access to liquidity so as to be able to certify to the Commission, at its request, that they have sufficient access to liquidity to continue operating as a going concern. This proposal will provide the Commission with the flexibility to deal with emerging liquidity drains at FCMs which may endanger customers, potentially prior to instances of regulatory capital non-compliance, allowing customer positions and funds to be transferred intact and quickly to another FCM. This change would promote sound risk management practices by helping to ensure that customers maintain control of their positions without interruption.

The proposed additions to notification requirements established in § 1.12 would enhance the Commission's ability to identify situations that could lead to financial strain for the FCM, which makes it possible for the Commission to monitor further developments with that FCM more carefully and to begin planning earlier for the possibility that the FCM's customer positions may need to be transferred to other FCMs, in the event

that the FCM currently holding those positions defaults. Advance notice helps to ensure customers' positions are protected by enabling the Commission to work closely with DCOs and DSROs to identify other FCMs that have requisite capital to meet regulatory requirements if they were to take on additional customer positions, thus facilitating smooth transition of those positions in the event that it is necessary.

Last, residual interest is an important aspect of protection for customer funds because it enables the FCM to ensure that it can meet all customer obligations at any time without using another customer's funds to do so. In general, the larger the residual interest, the more secure customer funds are in this respect. By requiring that senior management set the target for residual interest, and that they conduct adequate due diligence in order to inform that decision, the proposed rule promotes both informed decision making about this important form of protection, and accountability among senior management for this decision, both of which are consistent with sound risk management practices.

Other Public Interest Considerations

As discussed above, the recent failures of MF Global and Peregrine, FCMs to which customers have entrusted their funds, sparked a crisis of confidence regarding the security of those funds. This crisis in confidence could deter market participants from using regulated, transparent markets and clearing which would create additional costs for market participants and losses in efficiency and safety that could create additional burdens for the public. The Commission anticipates that this rule will not only address the current crisis of confidence, but that it will produce benefits for the public by virtue of avoiding similar defaults in the future.

These proposed amendments are not, however, without costs. The most significant costs created by the proposed amendments are those that increase the amount of capital that FCMs would be required to contribute to segregated accounts as part of establishing a target for their residual interest, incent them to hold additional capital, prevent them from holding excess segregated funds overseas, and that are created operationally by the formation of a risk management unit and adoption of new policies and procedures.

Multiple proposed changes would incent or require FCMs to increase the amount of residual interest that they maintain in segregated accounts including: (1) Requiring FCMs to establish a target for residual interest that reflects proper due diligence on the part of senior management; (2) disclosing the FCMs' targeted residual interest publicly; and (3) requiring them to report to the Commission and their DSRO any time their residual interest drops below that target. In addition by restricting FCMs' ability to withdraw residual interest from segregated accounts and obligating FCMs to report to the Commission and their respective DSRO each time the residual interest drops below the target, the proposed regulations would incent FCMs to hold additional capital, which is also likely to be a significant cost.

When FCMs hold excess customer funds overseas, such funds will likely be held at depositories that are themselves subject to foreign insolvency regimes, which may provide protections for customer funds that are less effective than those applicable under U.S. law. By prohibiting FCMs from holding excess customer funds overseas, the proposed regulations could reduce the returns that FCMs may obtain on invested customer funds.

And last, the proposed requirements related to operational procedures are likely to create significant costs, particularly related to creating and documenting policies and procedures, as well as complying with ongoing training, due diligence, and audit requirements. However, in several cases the implementation costs of proposed changes would be minimal. For example, some proposed requirements would obligate FCMs to provide the Commission and DSROs more regular access to information that FCMs and their depositories are already required to maintain, or in some cases are already reporting to their DSROs. The Commission also anticipates that some of the changes proposed codify best practices for risk management that many FCMs and DCOs may already follow. In such cases, the costs of compliance would be mitigated by the compliance programs or best practices that the firm already has in place. Moreover, in other cases the proposed changes codify practices that are already required by SROs, and therefore would impose no additional costs.

The initial and ongoing costs of the proposed rules for FCMs would vary significantly depending on the size of each FCM, the policies and procedures that they already have in place, and the frequency with which they experience certain events that would create additional costs under the proposed rules. The Commission estimates that the initial operational cost [96] of implementing the proposed rules would be between $193,000 and $1,850,000 per FCM.[97] And the initial cost to the SROs and DSROs would be between $41,100 and $63,500 per SRO or DSRO. The Commission estimates that the ongoing operational cost to FCMs would be between $287,000 and $2,300,000 per FCM per year.[98] As described below in § 1.52, the Commission does not have adequate information to determine the ongoing cost of the proposed requirements for SROs and DSROs.

In the sections that follow, the Commission considers the costs and benefits of the proposed changes, section by section, in light of the relevant 15(a) public interest, cost-benefit considerations.

[96] The Commission is not able to quantify the costs that would result from increased residual interest held in customer segregated accounts, from increased capital held by the FCM, or from lost investment opportunities due to restrictions on the amount of funds that may be held overseas. The Commission does not have sufficient data to estimate the amount of additional residual interest FCMs are likely to need as a consequence of proposed, the amount of additional capital they may hold for operational purposes, the cost of capital for FCMs, or the opportunity costs FCMs may experience because of restrictions on the amount of customer funds they can hold overseas, each of which would be necessary in order to estimate such costs.

[97] The lower bound assumes an FCM requires the minimum estimated number of personnel hours to be compliant with these new rules and that, when possible, they already have policies, procedures, and systems in place that would satisfy the proposed requirements. The upper bound assumes an FCM requires the maximum amount of personnel hours and do not have pre-existing policies, procedures, and systems in place that would satisfy the proposed requirements. The greatest amount of variation within in the range would depend on the number of new depositories an FCM must establish relationships with due to current depositories that would not be willing to sign the required acknowledgment letter. The lower bound assumes that an FCM does not need to establish any new relationships with depositories. The Commission estimates that the largest FCMs may have as many as 30 depositories, and as a conservative estimate, the Commission assumes for the upper bound that an FCM would have to establish new relationships with 15 depositories.

[98] As above, the lower bound assumes that an FCM requires the minimum estimated number of personnel hours to be compliant and that for event-triggered costs, the FCM bears the minimum number of possible events. The upper bound assumes an FCM requires the maximum number of personnel hours to be compliant. It also assumes an FCM has to notify the Commission pursuant to the proposed amendments in § 1.12 five times per year, and that an FCM withdraws funds from residual interest for proprietary use 50 times per year. The estimate does not include additional costs that would result if FCMs increase the amount of residual interest or capital that they hold in response to the proposed rules, or certain operational costs that the Commission does not have sufficient information to estimate.

Consideration of Costs and Benefits Related to Proposed Changes in Each Section

§ 1.3(rr)—Definition of ''Foreign Futures or Foreign Options Secured Amount''

Proposed Changes

As described above in II.R, the proposed amendments to § 1.3(rr) would replace the term ''foreign futures or foreign options customers'' with the term ''30.7 Customers.'' The former only includes U.S.-domiciled customers, whereas the term ''30.7 Customers'' includes both U.S.-domiciled and foreign-domiciled customers who place funds in the care of an FCM for trading on foreign boards of trade. This change expands the range of funds that the FCM must include as part of the foreign options or foreign futures secured amount.

In addition, the definition of ''foreign futures or foreign options secured amount'' currently means ''all money, securities and property held by or held for or on behalf of a futures commission merchant from, for, or on behalf of foreign futures or foreign options customers as defined in § 30.1.'' The proposed definition would change the meaning of ''foreign futures or foreign options secured amount'' so that it is equal to the amount of funds an FCM needs in order to satisfy the full account balances of each of its customers at all times. This definitional change supports the shift in § 30.7 from the ''Alternative Method'' to the ''Net Liquidating Equity Method'' of calculating the foreign futures or foreign options secured amount.

Benefits and Costs

These definitional changes would determine what funds are considered part of the ''foreign futures or foreign options secured amount.'' However, the costs and benefits of these changes are attributable to the substantive requirements related to the definitions and, therefore, are discussed in the cost and benefit considerations related to § 30.7.

§ 1.10—Financial Reports of Futures Commission Merchants and Introducing Brokers

Proposed Changes

As described above in II.A, the proposed amendments would make four changes. First, they would amend the 1–FR–FCM to create a new schedule called the ''Cleared Swap Segregation Schedule'' that would be included in the FCM's monthly report, together with the Segregation Schedule and Secured Amount Schedule. Second, it would make the Cleared Swap Segregation Schedule a public document.[99] Third, the proposed amendments would require each of the Schedules to include the FCM's target for residual interest in the accounts relevant to that Schedule, as well as a calculation of any surplus or deficit in residual interest with respect to that target. And fourth, the proposed rule would require each FCM to submit to the Commission a monthly statement reporting the FCM's leverage.

Benefits

The proposal to include target residual interest and monthly calculation of the deviation from that target on the monthly Schedules provides important benefits with respect to the safety of customer funds. The data in the reports is public information. Public disclosure incentivizes FCMs to set a reasonable target for residual interest. Under proposed regulations, FCMs would have to notify the Commission and their respective DSRO each time they drop below their targeted residual interest, which gives them an incentive to set a low target, even if they intend to keep more residual interest in their accounts. However, by disclosing an FCM's targeted residual interest to the public, the proposed rule would enable customers and potential customers of an FCM to incorporate the size of the FCM's targeted residual interest, and the corresponding amount of protection to customers' funds provided by that level of residual interest, into their selection of an FCM. Holding all other considerations constant, FCMs that have higher targets relative to their segregation requirements would presumably be more attractive to customers than FCMs that target smaller levels of residual interest relative to their segregation requirements because of the additional protection of customer funds it provides. This additional information permits customers to weigh this consideration along with considerations of price in selecting an FCM. Last, by requiring FCMs to report their leverage monthly, the proposed amendments would assist the Commission in monitoring each FCM's overall risk profile, which would help the Commission to identify FCMs that should be monitored more closely for further developments that could weaken their financial position.

Costs

As stated above, all else equal, by requiring FCMs to include their residual interest target in the monthly report, and by making the contents of those reports public, the proposed rule would incent FCMs to set a higher target for their residual interest in customer segregated funds. However, maintaining a larger targeted residual interest would create some costs for FCMs. Proprietary funds deposited into customer segregated accounts by an FCM are only allowed to be invested in § 1.25 investments and, therefore, are not available for other investments. In addition, placing additional capital in the customer segregated accounts reduces the amount of capital that an FCM has to meet operational needs, which would likely prompt the firm to raise or retain additional capital. Estimating the lost revenue that would result from the investment opportunities an FCM misses is not possible because the Commission is not able to estimate either the amount of increased residual interest that an FCM would, on average, maintain as the result of this proposed change, or the differential in return on investment between FCM funds placed into customer segregated accounts versus proprietary funds not held in such accounts. Similarly the Commission does not have adequate information to determine the average cost of capital for FCMs or the amount of additional capital that they would likely raise or retain as a consequence of this proposed change. The proposed requirement regarding monthly leverage statements will require FCMs to produce an additional report each month. The Commission anticipates that each FCM will incur a one-time cost in order to modify their systems to create the report, and then ongoing costs will be negligible because the report is likely to be automated. The Commission estimates that the one-time setup costs are likely to be between $2,800 and $5,700.[100]

Requests for Comment [101]

Question 1: The Commission requests comment regarding the costs and

[99] The Segregation Schedule and Secured Amount Schedule are already public documents.

[100] This assumes 40–80 hours of time from both a programmer and 20–40 hours from an intermediate accountant. The average compensation for a programmer is $53.64/hour [$82,518 per year/(2000 hours per year)*1.3 = $53.64/hour]; $53.64*40= $2,145.47 and $53.64*80= $4,290.94. The average compensation for an intermediate accountant is $34.11/hour [$52,484.00 per year/(2000 hours per year)*1.3 is $34.11per hour]; $34.11*20= $682.29 and $34.11*40= $1,364.58. All figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[101] The Commission has numbered its questions throughout the Cost Benefit Considerations section. When responding to specific questions, please reference the number of the question. In addition,

Continued

benefits of these proposed rules, including making residual interest targets public information. Please explain and, if possible, quantify the relevant costs and benefits.

Question 2: In addition, the Commission requests comment regarding the costs and benefits that would result from providing each FCM's daily calculation of residual interest public. Would the disclosure of an FCM's daily calculations of residual interest pose a risk to such FCM, the markets, to customers, or the public? If so, please explain. Or, conversely, would a lack of disclosure exacerbate risks to FCM customers or the public? If so, please explain.

Question 3: Market participants have suggested that additional information from FCMs' daily, bi-monthly, and monthly reports should be disclosed to the public. What alternatives should the Commission consider in this respect? What would be the costs and benefits of that alternative?

Question 4: In addition, the Commission requests information or data that would assist the Commission in quantifying the cost to FCMs of placing additional proprietary funds into the customer segregated account and the benefit to customers of having such additional funds in the segregated accounts.

§ 1.11 Risk Management Program for Futures Commission Merchants

Proposed Changes

As discussed in II.B above, proposed § 1.11 would require an FCM that carries accounts for customers to establish a risk management unit that is independent from the business unit and reports directly to senior management. In addition, it would require each FCM to establish and document a risk management program, approved by the governing body of the FCM, that, at a minimum: (a) Identifies risks and establishes risk tolerance limits related to various risks that are approved by senior management; (b) includes policies and procedures for detecting breaches of risk tolerance limits, and for reporting them to senior management; (c) provides risk exposure reports quarterly and whenever a material change in the risk exposure of the FCM is identified; (d) includes annual review and testing of the risk management program; and (e) meets specific requirements related to segregation risk, operational risk, and capital risk.

Regarding segregation risk, the proposed rule would require that each FCM must establish written policies and procedures that require, at a minimum: (1) Documented criteria for selecting depositories that would hold segregated funds; (2) a program to monitor depositories on an ongoing basis; (3) an account opening process that ensures the depository acknowledges that funds in the account are customers' funds before any deposits are made to the account, and that also ensures accounts are titled appropriately; (4) a process for determining a residual interest target for the FCM that involves due diligence from senior management; (5) a process for the withdrawal of an FCM's residual interest when such a withdrawal is not made for the benefit of the FCM's customers; (6) a process for determining the appropriateness of investing funds in § 1.25 compliant investments; (7) procedures to assure that securities and other non-cash collateral held as segregated funds are properly valued and readily marketable and highly liquid; (8) procedures that help to ensure appropriate separation of duties between those who account for funds and are responsible for statutory and regulatory compliance vs. those who act in other capacities with the company (*e.g.,* those who are responsible for treasury functions); (9) a process for the timely recording of all transactions; and (10) a program for annual training of FCM employees regarding the requirements for handling customer funds.

The proposed rule would require automated financial risk management controls that address operational risk, and written procedures reasonably designed to ensure that an FCM has sufficient capital to be in compliance with the Act and regulations and to meet its liquidity needs for the foreseeable future.

Benefits

Establishing a risk management unit with adequate authority; qualified personnel; and financial, operational and other resources to carry out the Risk Management Program would enhance protection of customer funds by mitigating the risk that the effectiveness of the Program is compromised by a lack of resources. Moreover, separation of the Risk Management Unit from the Business Unit mitigates the risk that conflicts of interest could interfere with the effectiveness of the risk management unit in avoiding situations that may lead to a loss of customer funds.

Furthermore, by requiring that the risk management unit report directly to senior management, § 1.11(d) would help ensure that the risk management unit's operations and concerns receive prompt attention from personnel who are able to address any problems that arise, and also minimizes the risk that conflicts of interest could cause a breakdown in communications that undermines the effectiveness of the risk management unit or the Risk Management Program. Each of these elements, by promoting the risk management unit's effectiveness, would help to ensure that the unit will identify and address emerging risks before such risks threaten the health of the FCM or the security of segregated customer funds.

The Commission believes the establishment of the proposed risk management program would provide several benefits to FCMs, customers, and the public, in particular with respect to the protection of customer funds.

a. The proposed requirement for FCMs to establish, as part of their risk management program, specific risk tolerance limits, would provide additional protection to FCMs by helping to ensure that they have a system in place to identify emergent risks to the business. By requiring an underlying methodology for establishing the limits, the proposed rule would promote reasoned decision making regarding the limits as they are set and updated. Quarterly review of the risk limits by senior management and annual review by the Governing Body would help to ensure that limits are current as the market, business, and customer base evolve, and also provide accountability for periodic evaluation of such risks at the most senior levels of the organization, which helps to ensure that senior leaders are proactively discussing and addressing the full range of risks that are facing the business. As a consequence, these measures would help ensure that an FCM is taking whatever steps are necessary in order to reduce and mitigate the effects of emerging risks. Moreover, customer funds held at the FCM may face elevated risk of loss due to misuse or operational errors during times of financial strain at the FCM. By protecting the health of the FCM, the proposed requirements mitigate the risk that financial strain at the FCM would lead to a loss of customer funds that it holds.

b. By requiring policies and procedures for detecting breaches of the risk tolerance limits and notifying appropriate personnel, the proposed

commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rule, and should provide information to the Commission that would enable it to replicate and verify any quantitative estimates.

rule would promote objectivity when monitoring of each risk that the policies address, thus mitigating the risk that poor individual judgment could cause important emerging risks to go unnoticed, or could prevent proper personnel from being notified, leading to a loss of customer funds.

c. The contents of the proposed Risk Exposure Reports would help to ensure that attention is regularly given to an evaluation of each risk that is covered in the FCM's Risk Management Program and that senior management and the Governing Body of the FCM are made aware of the findings. They will also help to ensure that the Risk Management Program is continuously updated to reflect changing risks that face the business by requiring recommendations to be included in such reports, which promotes the effectiveness of the Program in protecting customer funds. Moreover, status updates on any incomplete implementation of previous recommendations from such reports provide accountability at the most senior levels of the FCM regarding implementation of initiatives to improve the Program.

d. Similar to above, review and testing of the risk management program on an annual basis as well as whenever there is a material change in the business, would help to ensure that the Risk Management Program continues to evolve as the risks facing the business evolve, thus promoting the effectiveness of the program, which in turn, would help protect the FCM. By requiring an analysis of adherence to the program the proposed requirement would promote compliance with it. And requiring the review and testing to be conducted by staff that are independent of the Business Unit or by an external third party promotes objectivity and rigor in the findings that would result, and requiring senior management and the Governing Body of the FCM to review the findings promptly helps to ensure that any breaches of compliance or other findings of the review are addressed promptly and effectively. As above, each of these elements promotes protection for the FCM, which in turn, reduces the likelihood that risk to the FCM could cause elevated risk of operational errors that could result in a loss of customer funds.

e. Regarding segregation risk, the requirements set forth in proposed § 1.11 would benefit customers and the financial integrity of markets by requiring FCMs to implement rigorous internal controls designed to detect and mitigate the risk that operational errors or fraud could lead to a loss of customer funds. More specifically, and as discussed above, proposed § 1.11 requires FCMs to establish written policies and procedures that address 12 components of segregation risk. The Commission addresses each of those components below.

1. Proposed § 1.11(e)(3)(i)(A) would establish a minimum set of factors that the FCM would have to incorporate into its due diligence standards and depositories would have to meet those standards in order to be eligible to be selected by the FCM to hold customer segregated funds. As a consequence, customers would have greater clarity about what factors were considered as their FCM selected individual depositories, leading to market discipline that encourages the protection of customer funds.

Documenting the process would enable regulators to review and audit for rigor of the process and adherence to it. Such documentation would help regulators identify risk creating operational patterns or errors that could increase risk to customer funds before those risks are realized. In addition, documenting such criteria helps to ensure that the depository is evaluated against substantive criteria that are relevant to the safety of customer funds held by the depository as a precondition for placing customer funds there. The proposed requirement, by specifying certain criteria that must be included in the FCM's policies and procedures, would also promote market discipline by giving customers clarity about what factors, at a minimum, are considered as part of the FCM's program for evaluating potential depositories.

Together, these benefits help to ensure that the FCM and depository have developed and adhere to procedures that minimize risk to customer funds, which reduces the risk that an FCM would experience a shortfall in their customer segregated funds account.

2. Regulation 1.11(e)(3)(i)(B) would require each FCM to establish a program to monitor depositories on an ongoing basis. This would mitigate the risk of loss of customer funds resulting from depository default or malfeasance because FCMs would be better able to discern emerging problems at the depository in time to move such funds to another depository before the customer segregated funds are affected. In addition, as above, documenting such a program would enable the Commission and DSRO to evaluate the FCM's diligence in monitoring its depositories by auditing the FCM's compliance with its own procedures in this respect, which would again lead to more effective protection of customer funds.

3. The proposal makes it clear that before an FCM is permitted to deposit any customer segregated funds at a depository, the depository must agree that, if instructed to do so by the Director of DSIO or the Director of DCR, it will make such transfers without delay. Requiring the acknowledgment letter to be signed before any funds are deposited removes uncertainty about whether the depository has been put on notice that it is required to move funds without delay when directed by the Director of DSIO or the Director of DCR. In the event of a default by an FCM, the Commission and relevant DCOs would immediately move customer funds in order to move open positions to a different FCM.

4. The proposal requires senior management to conduct due diligence to understand various factors that could impact the amount of residual interest that would be prudent to maintain in the segregated funds account, and then reach a determination about a targeted amount. The benefit of such a requirement is that it would protect customer funds by creating accountability for senior management. Requiring such due diligence helps ensure that senior management is attentive to the causes of segregated funds account underfunding. The requirement allows both flexibility and accountability in that it allows FCMs to account for relevant factors that vary across firms when determining an appropriate target, rather than requiring all FCMs to maintain a common target for residual interest. However, by requiring them to establish such a target and to conduct due diligence in doing so, it allows the Commission and DSROs to audit the FCMs to ensure that they reached their target through a reasoned decision-making process, and ensures that the respective boards approve and are responsible for the target.

Maintaining a target enhances market discipline by creating public accountability for an FCM. It communicates to customers that the FCM intends to maintain a certain residual interest in the account, and gives customers an opportunity to consider, when selecting an FCM, the additional security that varied levels of residual interest may provide for their funds.

5. A process for the withdrawal of residual interest that is not for the benefit of customers would help to ensure good communication and that senior managers are appropriately involved in the decision to remove

residual interest from segregated customer accounts. Good communication, deliberate decision-making, and proper involvement of senior managers would promote accountability when an FCM is removing residual interest. These benefits are particularly important at times when FCMs experience financial stress because good communication, deliberate decision-making, and proper involvement of senior management in decisions related to residual interest may be more likely to fail at such times, creating risk to segregated customer funds. By requiring FCMs to establish and follow procedures for withdrawals of residual interest, the rule would help to ensure that such failures do not occur.

An additional, related benefit is that by ensuring proper communication with and approval from relevant senior managers before such withdrawals occur, the proposed changes would enhance accountability among those managers for decisions that could create risk for segregated customer funds.

6. FCMs have a range of potential investments that are compliant with § 1.25. By requiring FCMs to establish a process for deciding how to invest those funds, the requirement would provide the Commission and DSRO with a standard by which such investment decisions could be judged, which would help prevent the FCM from investing primarily in the least credit-worthy § 1.25 investments. FCMs have an incentive to invest customer funds in § 1.25 compliant investments that offer the highest rate of return possible, but it is possible that the § 1.25 investments offering the highest rates of return are also less credit-worthy or less liquid than other § 1.25 investments. Requiring FCMs to set up, document and follow a process for assessing the appropriateness of investing segregated funds in § 1.25 investments ensures that FCMs take steps not only to determine whether an investment complies with § 1.25 as required by current regulation, but that the investment is also evaluated with respect to any risk it may pose to the FCM's primary responsibilities of preserving principal and maintaining liquidity when handling customer funds. In other words, this provision would help to prevent the possibility of a ''race to the bottom'' for FCMs investing in § 1.25 compliant assets.

7. If the FCM is not able to get accurate pricing for § 1.25 assets, it is difficult to know whether or not sufficient funds are in the segregated account. A shortage (and thus, in the event of insolvency, a loss of customer funds) could occur simply because the FCM can't accurately estimate the value of the assets that are there, or it could also make it easier for the FCM to intentionally skew their reports regarding funds in the customer segregated accounts by making favorable assumptions about the value of assets that are difficult to price. Requiring the FCM to establish a program for assessing the ease of pricing for § 1.25 assets helps reduce these risks and gives the Commission and DSRO an opportunity to understand the FCM's procedures and to enforce the FCM's compliance with them. This, in turn, promotes reasoned and disciplined decision-making with respect to the FCM's investment of customer funds in § 1.25 investments. Establishing procedures to evaluate the liquidity of § 1.25 instruments will help FCMs minimize the risk of such problems.

8. Appropriate internal controls are critical to the prevention of fraud. The Commission understands that FCMs typically require that certain duties are performed by separate people or separate groups of people in order to ensure that a proper system of checks and verification remains in place.[102] In particular, FCMs generally ensure that the individuals responsible for reporting and associated calculations are separate from the individuals responsible for operational transfers of funds. In the absence of such internal controls, one person or group of people with access to both movement and reporting of funds could transfer funds and then, for a time, hide those transfers from senior management, auditors, and the public.

The proposed rule would help protect customer funds by establishing a regulatory requirement that all FCMs develop procedures to ensure that the individuals responsible for calculating and reporting segregation account requirements and segregation account funds do not share duties with those who are responsible for transferring or investing segregated funds. This should result in controls to prevent fraudulent fund transfers.

9. The Commission regulations already require timely recording of transactions in § 1.35(b), but this proposed addition would require that FCMs develop written policies and procedures ensure that they have a consistent process to achieve that outcome. Again, requiring FCMs to document their procedures helps protect customer funds by enabling the Commission and DSROs to audit for compliance, detecting and preventing operational issues that could pose risk to customer funds before those risks result in an actual loss to customer funds.

10. Proper training of employees would help to ensure that employees understand the written procedures regarding segregated funds. The proposed training requirement provides flexibility for an FCM to determine whether it should develop the required training in house, or to pay a vendor to develop a training program. Training regarding the requirements of the Act and Commission regulations regarding handling customer funds will help to ensure that employees understand how the procedures and requirements related to customer funds apply to various situations they face in their work for the FCM. Training regarding the second and third points mentioned above will help to ensure that the Commission and DSRO are notified promptly whenever any of the circumstances covered in § 1.12 occur, or whenever there is a breach of the FCM's own policies and procedures, even if the circumstances in § 1.12 have not occurred. Moreover, by requiring broad participation in training focused on these points, the proposed requirement would protect customer funds by encouraging a culture of accountability and transparency through self-disclosure. Training regarding the consequences of failing to comply will help to ensure that employees understand the seriousness with which the Commission regards violation of these standards, thereby providing an incentive to diligently adhere to them. In addition, requiring FCMs to provide the training annually helps ensure that the critical content of this training is not lost due to the passing of time, or employee turnover.

In addition, by requiring automated financial risk management controls, the proposed Risk Management Program would reduce operational risk that could result from ''fat finger'' errors when submitting trades, or from technological ''glitches'' using automated trading. Several events have demonstrated that such operational risks are difficult to predict, tend to emerge so quickly that non-automated forms of risk management may not be able to contain them, and can threaten an FCM's continued viability. Automated controls would help to reduce these operational risks, thereby providing additional protection to FCMs and mitigating the risk of loss to customer funds.

Last, by requiring an FCM to develop and implement written policies that ensure it has sufficient capital and liquidity not only to comply with the

[102] *See* ''Initial Recommendations for Customer Funds Protection'' by the FIA Futures Markets Financial Integrity Task Force.

Act and Commission regulations but also to meet its foreseeable needs, the proposed rule would promote reasoned decision making regarding capital retention and allocation decisions because such decisions would have to be made according to the established policies and procedures, weighing the factors and inputs included therein. Moreover, written procedures could be used by the Commission and relevant SROs as the basis for audits to check for compliance with such procedures, which would help the Commission and relevant SRO identify operational problems that could lead to loss of customer funds.

In many cases the proposed rules provide flexibility to FCMs by requiring that they develop and document their own policies and procedures rather than prescribing specific procedures for them. In so doing, the proposal gives FCMs an opportunity to tailor policies and procedures that accommodate their specific needs and operational patterns, which may vary from one FCM to another based on differences in their size, involvement in specific markets, and the characteristics of their investor base. This approach is likely to be less costly for FCMs when compared to the alternative of a more prescriptive approach because it is less likely to require changes to operational patterns if existing procedures are adequate to provide the same protections to customer funds. In addition, the flexibility of this approach benefits market participants and customers alike because it is the FCM that is in the best position to define the precise form of internal controls that will best protect customer funds from operational errors and fraud.

In addition, as suggested above, requiring FCMs to document their policies and procedures regarding their Risk Management Program would enable the Commission and DSRO to audit for operational problems that could put customer funds at risk before those risks turn into actual losses. This would strengthen the critical first line of defense against operational errors and fraud.

Costs

The risk management unit, required by the proposed rule, would create certain personnel costs. The Commission estimates that such a unit would require between one and ten full-time staff depending on the size and complexity of the FCM. Therefore, the Commission estimates that the annual cost for the risk management unit would be between $171,000 and $1,934,000.[103]

There are costs associated with the Risk Management Program proposed in § 1.11.

a. Each FCM would likely have to review its operations, business model, market conditions, customer base, and a number of other factors in order to identify the risks that it should be monitoring. In addition, each FCM would have to develop and document methodologies for establishing risk tolerance limits for each risk that they choose to monitor. Last, for each FCM, the risks and proposed limits for those risks would have to be reviewed and approved quarterly by its senior management and annually by the board. The Commission estimates that the initial cost for identifying relevant risks and developing and documenting methodologies for establishing thresholds would be between $28,800 and $68,400.[104] The ongoing cost for reviewing the risks and limits and approving them would be between $27,900 and $99,700 per year.[105]

b. Developing these policies and procedures for detecting breaches of the risk tolerance limits and notifying appropriate personnel would create an initial cost, but little ongoing cost since most of the monitoring costs are included in other elements (quarterly reports, annual audits, etc.). The Commission estimates that the initial cost to develop these policies and procedures is between $3,400 and $6,800.[106]

c. Many of the activities necessary for completing the quarterly review of risk thresholds will overlap with the activities necessary for completing the Risk Exposure Reports. However, some additional time will be required to compile the Report and to incorporate information that is distinct from that which is required for the quarterly review of risk thresholds. In addition, the FCM's board and senior management are obligated to review the report. Therefore, the Commission estimates that each Risk Exposure Report will cost between $8,800 and $13,300 per year.[107]

[103] This assumes 2,000–10,000 hours per year from compliance attorneys (*i.e.,* 1–5 full time compliance attorneys) and 0–10,000 hours per year from a senior risk management specialist (*i.e.,* 0–5 full time senior risk management specialists). The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*2000 = $170,693.90 and $85.35*10,000 = $853,469.50. The average compensation for a senior risk management specialist is $83.13/hour [$166,251.00 per year/(2000 hours per year)*1.3 is $83.13 per hour]; $83.13*0 = $0 and $83.13*10,000 = $1,080,631.50.

[104] For initial costs, this estimates initial costs of 50–250 hours from compliance attorneys, 10–100 hours from risk management personnel, 36 hours (total) of time from the board, and 10–20 hours each from the CEO, CFO, COO, and CCO. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*50 = $4,267.35 and $85.35*250 = $21,336.77. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*10 = $653.25 and $65.33*100 = $6,532.50. The average compensation for a member of a firm's board of directors is estimated by the Commission to be $200.00/hour [$100,000 per year/(500 hours per year) is $200 per hour]; $200.00*36 = $7,200.00. The average compensation for a chief executive officer is estimated by the Commission to be $650.00/hour [$1,000,000 per year/(2000 hours per year)*1.3 is $650.00 per hour]; $650.00*10 = $6,500.00 and $650.00*20 = $13,000. The average compensation for both a chief financial officer and a chief operations officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*10 = $4,550.00 and $455.00*20 = $9,100.00. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*10 = $3,329.18 and $110.97*20 = $11,097.26.

[105] For ongoing costs, this estimates annual costs of 20–200 hours from compliance attorneys, 50–300 hours from risk management personnel, 48 hours (total) of time from the board, and 8–32 hours each from CEO, CFO, COO, and CCO. Using the same compensation figures listed above, this is $85.35 *20 = $1,706.94 and $85.35*200 = $17,069.39 for a compliance attorney; $65.33*50 = $3266.25 and $65.33*300 = $19,597.50 for a risk management specialist; $200.00*48 = $9,600.00 for the board; $650.00*8 = $5,200.00 and $650.00*32 = $20,800.00 for the CEO; $455.00*8 = $3,640.00 and $455.00*32 = $14,560.00 for both the CFO and COO; and $110.97*8 = $887.78 and $110.97*32 = $3,551.12 for the CCO. The compensations of an average CEO and CFO are estimates by the Commission; the compensation of the board of directors is based on the average compensation of the boards of several large FCMs. All other figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[106] This estimates 40–80 hours of time from a compliance attorney. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*40 = $3,413.88 and $85.35*80 = $6,827.76. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[107] This estimates 20–50 hours of compliance attorney time, 20–50 hours from risk management personnel, 12 hours of board time, and 2 hours from each of the CEO, CFO, COO, and CCO. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*20 = $1,706.94 and $85.35*50 = $4,267.35. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*20 = $1,306.50 and $65.33*50 = $3,266.25. The average compensation for a member of a firm's board of directors is estimated by the Commission to be $200.00/hour [$100,000 per year/(500 hours per year) is $200 per hour]; $200.00*12 = $2,400.00. The average compensation for a chief executive officer is estimated by the Commission to be $650.00/hour [$1,000,000 per year/(2000 hours per year)*1.3 is $650.00 per hour]; $650.00*2 = $1,300.00. The average compensation for both a chief financial officer and a chief operations officer is estimated by

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d. The Commission estimates that review and testing of the Risk Management Program will cost between $6,000 and $24,300.[108] An FCM must conduct such a review and testing annually as well as any time it experiences a material change in the business that is reasonably likely to alter the risk profile of the FCM. The Commission does not have adequate information to estimate how frequently such a change in the business will occur, so it has assumed one review and testing per year.

e. Regarding the policies and procedures that are required to address segregation risk, proposed § 1.11 would create three sets of costs: (1) costs related to developing and documenting all required policies and procedures; (2) initial implementation costs; and (3) ongoing costs.[109]

1. The Commission estimates that developing and documenting requisite policies and procedures would require one or more compliance attorneys to be heavily involved interpreting and explaining the Act and Commission requirements to other affected employees, guiding other subject matter experts in the development of compliant operations, and drafting the required documentation. Risk management personnel would also likely be involved in developing procedures to review banks and § 1.25 investments as well as to support the due diligence that senior management will have to conduct in order to establish a target residual interest for the FCM. The CFO and other senior personnel reporting to the CFO would likely be involved with selecting a target for the firm's residual interest and developing procedures for making withdrawals of residual interest for proprietary use. The CEO and board would be involved in reviewing and approving the policies and procedures required under § 1.11. The Commission estimates that the likely cost for developing and documenting the policies and procedures that would be required under the proposed § 1.11 would be between $54,800 and $131,000.[110]

2. The policies and procedures must not only be documented, they must be implemented, which will create some one-time costs that will depend significantly on the extent to which an FCM already practices some of the operational procedures that the Commission is requiring here. While the Commission expects that some FCMs are likely to have certain policies and procedures in place already that comply with § 1.11, the Commission does not have adequate information to determine to what extent this is true. Therefore, for the purposes of estimation we have estimated the one-time costs for an entity that does not yet have any of the required policies and procedures in place. The Commission anticipates that in such a circumstance, implementing new policies and procedures would require risk management personnel to conduct initial due diligence on depositories and existing as well as prospective § 1.25 investments. Human Resource (''HR'') personnel would have to revise job descriptions to comply with policies to separate critical functions related to handling of customer funds, and would also have to develop new annual training.[111] One or more compliance attorneys would be involved ensuring that accounts are titled appropriately, securing requisite acknowledgment letters from depositories, setting up quarterly audits of policies and procedures, and providing general oversight of the implementation process. IT personnel will likely be required to automate certain aspects of the information collection that is necessary, and the CCO would likely be involved on virtually a full-time basis for some period of time as well, overseeing the implementation of critical new policies and procedures. The Commission estimates the cost for such an implementation would range between $90,800 and $275,300.[112]

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the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*2 = $910.00. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*2 = $221.95. The compensations of an average CEO and CFO are estimates by the Commission; the compensation of the board of directors is based on the average compensation of the boards of several large FCMs. All other figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[108] This assumes four weeks' worth of time from one to four intermediate compliance specialists. The average compensation of an intermediate compliance specialist is $37.90/hour [$58,303.00 per year/(2000 hours per year)*1.3 is $37.90]; $37.90*40 hours/week*1 = $6,063.51 and $37.90*40 hours/week*4 = $24,254.05. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[109] Developing, documenting, and implementing the requisite policies and procedures would require personnel hours from compliance attorneys, senior management, and limited involvement from others such as risk management, HR, and IT. Those costs are would vary, perhaps significantly, depending on the extent to which each FCM already has compliant procedures in place and the extent to which such procedures may already be documented. However, the Commission has endeavored to estimate broad ranges of costs that would likely result from efforts to develop and document the requirements of § 1.11, to implement compliant procedures, and then to sustain such procedures on an ongoing basis. And while the benefits are enumerated separately because their substantive benefits, in several cases, vary from one requirement to the next, the substantive costs are, in many cases, overlapping, and therefore the Commission has addressed them collectively.

[110] This estimate assumes 400–1000 hours of time from one or more compliance attorneys re: all aspects of the requirements (interpreting, summarizing, guiding compliance discussions, drafting, etc.), 80–160 hours from a firm's chief compliance officer re: All aspects of the program, 10–100 hours from risk management personnel re: bank selection, monitoring, process to assess § 1.25 investment decisions, and due diligence to support targeted residual amount decision, 4–20 hours from a firm's chief financial officer re: selection of target for residual funds and process for withdrawal of segregated account funds not for the benefit of FCM customers, 2–4 hours from a firm's CEO, and 40–50 hours from board collectively re: discussion and approval of written policies and procedures. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*400 = $34,140.00 and $85.35*1000 = $85,350.00. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*60 = $6,658.35 and $110.97*100 = $11,097.26. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*10 = $653.25 and $65.33*100 = $6,532.50. The average compensation for a chief financial officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*4 = $1,820.00 and $455.00*20 = $9,100.00. The average compensation for a chief executive officer is estimated by the Commission to be $650.00/hour [$1,000,000 per year/(2000 hours per year)*1.3 is $650.00 per hour]; $650.00*2 = $1,300.00 and $650.00*4 = $2,600.00. The average compensation for a member of a firm's board of directors is estimated by the Commission to be $200.00/hour [$100,000 per year/(500 hours per year) is $200 per hour]; $200.00*40 = $8,00.00 and $200.00*50 = $10,000.00. The compensations of an average CEO and CFO are estimates by the Commission; the compensation of the board of directors is based on the average compensation of the boards of several large FCMs. All other figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[111] However, they are likely to outsource some pieces of the implementation (e.g. annual training would likely be developed by vendors to meet the needs of multiple market participants) which will mitigate associated costs. If a firm chooses to use training created by a vendor, that would likely reduce the HR one-time costs significantly.

[112] This estimate assumes 100–200 hours of risk management personnel time (from employees of varying levels of pay) conducting initial due diligence on depositories and evaluating § 1.25 investments, 800–1000 hours of human resources personnel time (400–500 at a junior level and 400–500 at a senior level) revising job descriptions to accommodate separation of roles and developing annual training, 20–400 hours of time from one or more compliance attorneys for retitling accounts, securing requisite acknowledgements from depositories, setting up quarterly audits, and general oversight of implementation of new policies and procedures, 4–12 weeks of the time of a firm's Chief Compliance Officer, or 160–480 hours, and 160–800 hours of the time of IT personnel (140–700 at a junior to intermediate level and 20–100 at a senior level) as the firm will likely seek to automate some types of information collection and other steps necessary to support requirements. The average compensation for a senior risk management specialist is $108.06/hour [$166,251 per year/(2000

3. The costs necessary to sustain the policies and procedures required under § 1.11 are difficult to estimate because they would depend on variables such as the size of the firm, the program of governing supervision that they develop, and the degree of automation they achieve in their various ongoing processes (monitoring depositories, evaluating § 1.25 investments, reevaluating residual funds target, etc.), and the degree to which their operations are already compliant with the policies and procedures they would develop pursuant to the proposed § 1.11. However, as a lower bound, the ongoing costs would include expenses related to the time for: (1) The CCO to review quarterly audits and conduct due diligence that is necessary before providing certification of compliance with the Act, regulations and its policies and procedures with respect to segregated funds in the annual report; (2) risk management personnel to evaluate § 1.25 investments for liquidity and marketability and to monitor depository institutions where customer segregated funds are held; (3) the CFO and other senior management to review and determine the continued appropriateness of the FCM's target for residual interest; and (4) HR personnel to organize and deliver annual training. The Commission estimates that the lower bound for these costs is approximately $20,000 and that costs may be higher, depending on the variables mentioned above.[113]

In addition, FCMs would have to implement automated financial risk management controls that are reasonably designed to prevent entering of erroneous trades. The Commission anticipates that some, but not all, FCMs already have such systems in place. For those FCMs that do not yet have such systems in place, the Commission proposes that it would cost an FCM between $10,300 and $89,400 to implement such a system.[114]

§ 1.12 Maintenance of Minimum Financial Requirements by Futures Commission Merchants and Introducing Brokers

Proposed Changes

As described in the section by section discussion at II.C, the proposed changes to § 1.12 would alter the notice requirement so that it is no longer acceptable to give ''telephonic notice to be confirmed, in writing, by facsimile.'' Instead, all notices would be made in writing and submitted through an electronic medium acceptable to the Commission (currently, WinJammer).

In addition, as described above in II.C, the proposed changes would require that if an FCM has a shortfall in net capital but is not sure of their financial condition, the FCM should not delay notifying the Commission about the shortfall in net capital. The FCM must communicate each piece of information (knowledge of the shortfall and knowledge of the financial condition of the FCM) to the Commission as soon as it is known.

The proposed requirements in paragraphs (i), (j), (k) and (l) of § 1.12 identify additional circumstances in which the FCM must provide immediate written notice to the Commission, relevant SRO and to the SEC if the FCM is also a broker-dealer. Those circumstances are: (1) If an FCM discovers that any of the funds in segregated accounts are invested in investments not permitted under § 1.25; (2) if an FCM does not have sufficient funds in any of their segregated accounts to meet their targeted residual interest; (3) if the FCM experiences a material adverse impact to its creditworthiness or ability to fund its obligations; (4) whenever the FCM has a material change in operations including changes to senior management, lines of business, clearing arrangements, or credit arrangements that could have a negative impact on the FCM's liquidity; and (5) if the FCM receives a notice, examination report, or any other correspondence from a DSRO, the SEC, or a securities industry self-regulatory organization, the FCM must notify the Commission, and provide a copy of the communication as well as a copy of their response to the Commission.

Last, proposed changes in paragraph (n) of § 1.12 would require that every notice or report filed with the Commission pursuant to § 1.12 would include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the event.

Benefits

The proposed changes requiring that notice to the Commission be given in written form via specified forms of electronic communication not only adapt the rule to account for modern forms of communication, but also reduce the possibility of notification being delayed in reaching appropriate Commission staff. The proposed requirement would ensure that such

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hours per year)*1.3 is $108.06 per hour]; $108.06*100 = $10,806.00 and $108.06*500 = $54,030.00. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*100 = $6,532.50 and $65.33*500 = $32,665.00. The average compensation for a junior human resources representative is $40.95/hour [$62,989 per year/(2000 hours per year)*1.3 is $40.95 per hour]; $40.95*800 = $32,760.00 and $40.95*1000 = $40,950.00. The average compensation for a senior human resources representative is $71.45/hour [$109,921 per year/(2000 hours per year)*1.3 is $71.45 per hour]; $71.45*100 = $7,144.87 and $71.45*500 = $35,724.33. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*20 = $1,706.94 and $85.35*400 = $34,138.78. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*160 = $17,755.61 and $110.97*480 = $53,266.82. The average compensation for a programmer is $53.64/hour [$82,518 per year/(2000 hours per year)*1.3 = $53.64/hour]; $53.64*140 = $7,509.14 and $53.64*700 = $37,545.69. The average compensation for a senior programmer is $74.56/hour [$114,714 per year/(2000 hours per year)*1.3 = $74.56/hour]; $74.56*20 = $1,491.28 and $74.56*100 = $7,456.41. All figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[113] This estimate assumes 20+ hours per year from the CCO for due diligence and certification of compliance on annual report and reviewing quarterly audits, 40+ hours each per year from junior and senior risk management personnel evaluating § 1.25 investments for liquidity and marketability and monitoring depository institutions where customer segregated funds are held, 6+ hours per year from the CFO and other senior management for reviewing the target for the firm's residual interest, and 20+ hours each per year from junior and senior HR—organizing and delivering annual training, as well as at least a day's training for 20 employees, or 160 hours from an average financial employee, such as a general intermediate trader. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*20 = $2,219.45. The average compensation for a senior risk management specialist is $108.06/hour [$166,251 per year/(2000 hours per year)*1.3 is $108.06 per hour]; $108.06*40 = $4,322.53. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*40 = $2,613.00. The average compensation for a chief financial officer is estimated by the Commission to be $455.00 per/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*6 = $2,730. The average compensation for a junior human resources representative is $40.94/hour [$62,989.00 per year/(2000 hours per year) = $40.94/hour]; $40.94*20 = $818.86. The average compensation for a senior human resources representative is $71.45/hour [$109,921.00 per year/(2000 hours per year) = $71.45/hour]; $71.45*20 = $1,428.97. The average compensation for a general intermediate trader is $36.48/hour [$56,130.00 per year/(2000 hours per year)*1.3 is $36.48 per hour]; $36.48*160 = $5,837.52. The compensations of an average CFO is an estimate by the Commission. All other figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[114] This estimates 150–1500 hours of mid-level IT programming time and 30–120 hours of senior level IT personnel time. The average compensation for a programmer is $53.64/hour [$82,518 per year/(2000 hours per year)*1.3 = $53.64/hour]; $53.64*150 = $8,045.51 and $53.64*1500 = $80,455.05. The average compensation for a senior programmer is $74.56/hour [$114,714 per year/(2000 hours per year)*1.3 = $74.56/hour]; $74.56*30 = $2,236.92 and $74.56*120 = $8,947.69. All figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

notices are submitted to WinJammer, which forwards notices to appropriate personnel within the Commission via email within a matter of minutes, if not seconds.

With respect to the proposed change in § 1.12(a)(2), if an FCM knows that it does not have adequate capital to meet the requirements of § 1.17 or other capital requirements, and is also not able to calculate or determine its financial condition, it is likely that the FCM is in a period of extraordinary stress. In these circumstances, time is of the essence for the solvency of the FCM and to the protection of its customers and counterparties. Therefore, it is important that the Commission, DSRO, and SEC (if the FCM is also a broker-dealer) be notified immediately so that they can begin assessing the FCM's condition, and if necessary, making preparations to allow the transfer of the customers' positions to another FCM in the event that the FCM currently holding those positions has insufficient regulatory capital. These preparations help to ensure that the customers' funds are protected in the event of the FCM's default, and that the positions of its customers are transferred expeditiously to another FCM where those customers may continue to hold and control those positions without interruption to the customer's positions.

The situations enumerated in proposed §§ 1.12(i) and (j) are more specific indicators of potential or existing problems in the customer segregated funds accounts. Notifying the Commission in such circumstances will enable it to monitor steps the FCM is taking to address a shortfall in targeted residual interest, or to direct the FCM as it takes steps to address improperly invested segregated funds. In either case, the Commission will be able to be much more closely involved in rectifying the situation and ensuring the continued protection of customer segregated funds.

The situations enumerated in proposed §§ 1.12(k) through (l) are circumstances indicating that the FCM is undergoing changes that could indicate or lead to financial strain. Alerting the Commission and relevant SRO in such circumstances will enable both to protect customer funds by monitoring the FCM more closely in order to ensure that any developing problems are identified quickly and addressed proactively by the FCM with the oversight of the Commission and relevant SRO.

The proposed amendment requiring that the FCM notify the Commission whenever it receives a notice or results of an examination from the DSRO, SEC, or securities-industry self-regulatory body, would ensure that the Commission is aware of any significant developments affecting the FCM that have been observed or communicated by other regulatory bodies. Such communications could prompt the Commission to heighten its monitoring of specific FCMs, or create an opportunity for the Commission to work collaboratively and proactively with other regulators to address any concerns about how developments in the FCM's business could affect customer funds.

The proposed requirement that notifications to the Commission pursuant to § 1.12 include a discussion of what caused the reporting event and what has been, or is being done about the event would provide additional information to Commission staff that help them quickly gauge the potential severity of related problems that have been or are developing at the reporting FCM, IB, or SRO. It would also help Commission staff discern how effectively the reporting entity is responding to such problems, which could assist the staff in determining whether the situation is likely to be corrected quickly or to continue deteriorating.

Costs

As discussed above, the proposed rule requires that FCMs provide immediate notice to the Commission and its DSRO in five additional circumstances. These additional requirements create some minimal reporting costs when such circumstances arise. The Commission estimates that the total cost of completing and sending the requisite form is approximately $9,700 and $19,400 per form.[115]

Ongoing monitoring for any of the five additional circumstances that require reporting to the Commission, relevant SRO, and to the SEC if the FCM is a broker-dealer will also create some costs. In its consideration of the proposed rule, the Commission assumes that FCMs will automate the process for monitoring residual interest for any shortfall against the firm's target. Furthermore, the Commission anticipates that FCMs will build on the systems that they already have in place to calculate residual interest once per day at the close of business. The incremental cost of modifying such systems to monitor residual interest compared to the target value on an ongoing basis is likely to be between $1,800 and $6,300.[116] Identifying instances where their FCM has experienced a material adverse impact to its creditworthiness or ability to fund its obligations, as would be required by proposed § 1.12(k), would likely require deliberation among senior leaders at the FCM. Such deliberations, however, would likely be prompted by observations that such leaders make in the ordinary course of business, and therefore would not require proactive monitoring. The Commission estimates that deliberations among senior leaders to determine whether there is evidence suggesting a material decrease in the FCM's creditworthiness has occurred would cost at least $6,600 per year.[117]

Material changes to the FCM's leadership or business would create some incremental costs. Some of the material changes envisioned, such as changes in senior leadership, are discrete events that do not require monitoring in order to identify. On the other hand, events that constitute a material change in operations, credit arrangements, or ''any change that could adversely impact the firm's liquidity

[115] This estimates 8–16 hours of time from both the CCO and the CFO, 10–20 from the General Counsel, 20–40 from a compliance attorney, and 10–20 from a senior accountant. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*2 = $221.95 and $110.97*4 = $443.89. The average compensation for a chief financial officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*2 = $910.00 and $455.00*4 = $1,820.00. The average compensation for a general counsel is estimated by the Commission to be $260.00/hour [$400,000 per year/(2000 hours per year)*1.3 is $260.00 per hour]; $260.00*10 = $2,600.00 and $260.00*20 = $5,200.00. The average compensation for a senior accountant is $44.18/hour [$67,971 per year/(2000 hours per year)*1.3 = $44.18/hour]; $44.18*10 = $441.81 and $44.18*20 = $883.62. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[116] This estimates 20–90 hours of personnel time from a programmer and 10–20 hours of personnel time from a senior programmer. The average compensation for a programmer is $53.64/hour [$82,518 per year/(2000 hours per year)*1.3 = $53.64/hour]; $53.64*20 = $1,072.73 and $53.64*90 = $4,827.30. The average compensation for a senior programmer is $74.56/hour [$114,714 per year/(2000 hours per year)*1.3; $74.56*10 = $745.64 and $74.56*20 = $1,491.28. All figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[117] This estimates at least 8 hours per year from the CFO, the CCO, and the General Counsel. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*8 = $887.78. The average compensation for a chief financial officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*8 = $3,640. The average compensation for a general counsel is estimated by the Commission to be $260.00/hour $400,000.00 per year/(2000 hours per year)*1.3 is $260.00 per hour]; $260.00*8 = $2,100.00. The figure for the CCO is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry; other compensations are estimates by the Commission.

resources,'' [118] would only be reliably recognized as a material change by someone with a broad knowledge of the firm's operations and finances, so the Commission assumes that senior management would fulfill these requirements. However, identifying and addressing material changes to the business is a function that senior management already plays, and therefore monitoring for such changes would not create any incremental costs. The proposed rule would make it necessary for senior management, in addition to identifying changes to the business, to make a decision about whether or not those changes are material and therefore should be reported. The Commission proposes that the additional time senior management spends making determinations about the materiality of changes to the business, as defined by the proposed rule, would require approximately twenty hours of time from both the CCO and CFO. Therefore, the Commission estimates that the monitoring costs would be $11,300 and $22,600.[119]

The proposed requirement that notices or reports filed with the Commission pursuant to § 1.12 include a discussion of how the reporting event originated and what has been, or is being done to address the reporting event, will increase the cost of such reports. The Commission anticipates that this requirement would prompt the CFO, General Counsel, and CCO of a reporting entity to invest additional time in developing and reviewing the report. The Commission anticipates that the incremental cost associated with the additional time spent by the CFO, General Counsel, and CCO would be between $3,300 and $6,600 per report.[120]

Additional proposed changes would introduce only minimal, if any, additional costs. For example, all FCMs already use WinJammer to submit certain reports to DSROs and to the Commission, so there would not be any additional cost involved with § 1.12(n)(3) requirement that such notices to be submitted through that platform rather than via fax.[121] Nor is there any cost associated with this proposed change to § 1.12(a)(1). The FCM is still required to disclose its financial condition to the Commission, DSRO and SEC (if applicable) as soon as it can be ascertained. The proposed change does not alter the information that the FCM must gather, calculate, or report. It merely requires that each of the two pieces of information relevant to the requirements in § 1.12(a)(1–2) are submitted as soon as they are known.

Request for Comment

Question 5: The Commission requests additional information regarding the costs of these additional notification requirements. Specifically, how much time will information technology and compliance personnel have to invest in order to modify systems to calculate residual interest on a continual basis? How much time would be necessary to monitor for material changes in the business and what level of personnel would have to participate in that in order to draw reliable conclusions about whether or not a material event had occurred?

§ 1.16 Qualifications and Reports of Accountants

Proposed Changes

As discussed above in II.E, the proposed changes would require that in order for an accountant to be qualified to conduct an audit of an FCM, that accountant would have to be registered with the Public Company Accounting Oversight Board (''PCAOB''),[122] have undergone at least one examination by the PCAOB, and have addressed any deficiencies noted by the PCAOB within three years of the report noting such a deficiency.

Second, the amendments would require that the governing body of the FCM ensure that the accountant engaged for an audit is duly qualified, and specifies certain qualifications that must be considered when evaluating an accountant for such purpose.

Last, the Commission is proposing to require a public accountant to state in the audit opinion whether the audit was conducted in accordance with U.S. generally accepted auditing standards after full consideration of the auditing standards adopted by the PCAOB.

Benefits

By requiring accountants to be registered with PCAOB and to have undergone at least one examination by the same, the proposed rule would help to ensure that the accountant is qualified to audit publicly traded companies, which are often more complex than those that are privately held. As a consequence, the proposed requirement would promote selection of accounting firms that are more sophisticated and experienced than would necessarily be the case in the absence of the proposed amendment, which would help to ensure that the accountant is large enough to maintain independence in its examination and has adequate experience to deal with the unique aspects of an FCM's business model, operational processes, and financial records.

Requiring the FCM's board to evaluate and approve accountants conducting audits for the FCM would tend to enhance protection of customer funds by increasing accountability among the board for any errors resulting from an accountant's lack of relevant experience. Consequently, the requirement would incent the board to choose auditors carefully, or to provide diligent oversight as senior management makes such selections. This would promote selection of highly qualified accountants, which would help to ensure that audits are as effective as possible in identifying problems with operational controls, potential indications of fraud, or other warning signs that could enable senior

[118] § 1.12(l).

[119] This estimates 20–40 hours of time each from the CCO and CFO. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*20 = $2,219.45 and $110.97*40 = $4,438.90. The average compensation for a chief financial officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*20 = $9,100.00 and $455.00*40 = $18,200.00. The compensations of an average CFO is an estimate by the Commission. The figure for a CCO is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[120] This estimates that the CFO, General Counsel, and CCO will each spend an additional 4–8 hours developing and reviewing the report. The average compensation for a chief financial officer is estimated by the Commission to be $455.00/hour [$700,000 per year/(2000 hours per year)*1.3 is $455.00 per hour]; $455.00*4 = $1,780.00 and $455.00*8 = $3,640.00. The average compensation for a general counsel is estimated by the Commission to be $260.00/hour [$400,000.00 per year/(2000 hours per year)*1.3 is $260.00 per hour]; $260.00*4 = $1,040.00 and $260.00*8 = $2,100.00. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*4 = $443.88 and $110.97*8 = $887.78. The figure for the CCO is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry; other compensations are estimates by the Commission.

[121] *See* NFA Interpretive Notice 9028—NFA Financial Requirements: The Electronic Filing of Financial Reports. Available at: *http://prodwebvip.futures.org/nfamanual/NFAManual.aspx?RuleID=9028&Section=9. See also* CME Advisory Notice: Enhanced Customer Protections & Rule Amendments, June 27, 2012. Available at: *http://www.cmegroup.com/tools-information/lookups/advisories/clearing/AIB12-08.html.*

[122] ''PCAOB is a nonprofit corporation established by Congress to oversee the audits of public companies in order to protect the interests of investors and further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB also oversees the audits of broker-dealers, including compliance reports filed pursuant to federal securities laws, to promote investor protection.'' *See http://pcaobus.org/Pages/default.aspx.*

management and the Commission or DSRO to protect customer funds more effectively.

Costs

The Commission anticipates that auditors that are registered with the PCAOB and that have undergone at least one examination by the PCAOB are likely to charge more for audits, than those that do not have those qualifications. However, the Commission does not have adequate information to estimate the difference in costs.

Request for Comment

Question 6: The Commission requests comment regarding the cost of audits for an FCM. Specifically, what is the range of costs and average cost of an audit conducted by auditors with the credentials required in the proposed rule? What is the range of costs and the average cost of an audit conducted by auditors without such qualifications?

§ 1.17 Minimum Financial Requirements for Futures Commission Merchants And Introducing Brokers [123]

Proposed Changes

As described in the section by section discussion at II.F, the Commission is proposing to amend § 1.17 by adding a new provision that will authorize the Commission to require an FCM to cease operating as an FCM and transfer its customer accounts if the FCM is not able to certify and demonstrate sufficient access to liquidity to continue operating as a going concern.

In addition, FCMs that are dual registrants (FCM and BD) are allowed to use the Securities and Exchange Commission's broker-dealer approach [124] to evaluating the credit risk of securities that the FCM invests in and assigning smaller haircuts [125] to those that are deemed to be a low credit risk, should the SEC adopt as final its proposed rule to eliminate references to credit ratings. The proposed change to § 17(c)(5)(v) would allow FCMs that are not dual registrants to use the same approach. Reducing the haircut assigned to low credit risk securities that the FCM invests in (which would potentially include some investments compliant with the requirements of § 1.25), reduces the capital charge that the FCM must take for investing in those securities.

Last, the proposed amendments would change the period of time that an FCM can wait for margin payments from a customer before taking a capital charge from three days to one day.

Benefits

As discussed in II.F, an FCM's ability to meet capital requirements and segregation requirements is not necessarily a sufficient indicator of the FCM's continued viability as a going concern. If an FCM does not have access to liquidity to meet identifiable, imminent financial obligations, the FCM will likely default, regardless of the amount of capital that is recognized on its balance sheet. In such circumstances, transferring customer positions to another FCM before the current FCM enters into bankruptcy provides additional protection to customer funds. Once the FCM enters into bankruptcy, the transfer of customer positions may be slowed by the trustee's involvement, which could interrupt customers' ability to actively manage those positions. In addition, if the FCM enters into bankruptcy before transferring customers' positions, customer segregated funds may be subject to trustee fees. Transferring the positions before the FCM enters into bankruptcy, therefore, provides additional protection to customers by preserving their ability to continuously manage their accounts and by protecting their funds from being subject to trustee fees.

By allowing FCMs that are not dual registrants to follow the same rules as those that are dual registrants, the change would harmonize the regulation of FCMs with respect to minimal financial requirements. This would place FCMs that are not dual registrants on a level playing field with those that are dual registrants, which contributes to the competitiveness of the financial markets.

In § 1.17(c)(5)(viii), the Commission proposes to reduce the period of time an FCM can wait to receive margin call payments from customers before taking a capital charge, which will incent FCMs to exercise increased diligence when seeking such payments, and therefore will likely prompt customers to provide such payments more quickly. As a consequence, the risk that a debit balance could develop in a customer's account due to tardy margin call payments would be reduced, and the amount of residual interest that the FCM would need to maintain in the segregated accounts in order to protect against the possibility that such debit balances could cause them to have less that is required in their segregated accounts would also be reduced. This provides benefits for the FCM by reducing the amount of capital that it must contribute to the customer segregated accounts, and for customers, by promoting more rapid margin call payments from other customers to support their own positions.

Costs

With respect to costs, the proposed amendment § 1.17(a)(4), allowing the Commission to require an FCM to transfer its customer positions if the FCM is not able to immediately certify that its liquidity is adequate to continue as a going concern, would give the Commission the authority to force the FCM to transfer its customer positions to another FCM in such circumstances. This could create additional costs for the FCM in two different ways. First, it is possible that while the FCM may not be able to immediately certify that it has sufficient liquidity to continue as a going concern but may nevertheless obtain sufficient liquidity before its impending obligations become due. If the FCM is forced to transfer its positions before it obtains the liquidity necessary to demonstrate that it may continue as a going concern, the FCM will have lost its FCM business. Second, if the FCM is working on obtaining sufficient liquidity to continue as a going concern, it may be able to obtain such liquidity under more favorable terms if it has time to consider multiple offers. However, if the FCM has a

[123] CEA 4(d)(2), referenced in § 1.17, states, ''It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.''

[124] As stated above in II.F above, under the SEC proposal, a BD may impose the default haircuts of 15 percent of the market value of readily marketable commercial paper, convertible debt, and nonconvertible debt instruments or 100 percent of the market value of nonmarketable commercial paper, convertible debt, and nonconvertible debt instruments. A BD, however, may impose lower haircut percentages for commercial paper, convertible debt, and nonconvertible debt instruments that are readily marketable, if the BD determines that the investments have only a minimal amount of credit risk pursuant to its written policies and procedures designed to assess the credit and liquidity risks applicable to a security. A BD that maintains written policies and procedures and determines that the credit risk of a security is minimal is permitted under the SEC proposal to apply the lesser haircut requirement currently specified in the SEC capital rule for commercial paper (*i.e.,* between zero and ½ of 1 percent), nonconvertible debt (*i.e.,* between 2 percent and 9 percent), and preferred stock (*i.e.,* 10 percent).

[125] As stated above in II.F, in computing its adjusted net capital, an FCM is required to reduce the value of proprietary futures and securities positions included in its liquid assets by certain prescribed amounts or percentages of the market value (otherwise known as ''haircuts'') to discount for potential adverse market movements in the securities.

shortened timeline to consider offers before being forced to transfer its customer positions to another FCM, it may be forced to accept an offer that is less attractive than what otherwise would have been the case.

Regarding the proposed amendment to § 1.17(c)(5)(v) changing the haircutting procedures for FCMs, lowering the amount of capital that the FCM must hold reduces the buffer it has to absorb any losses that result from its own investments. However, the Commission proposes that even in the absence of the amendment proposed here dual registrants will be able to use the SEC's haircutting procedure. Therefore, only FCMs that are not dual registrants would be impacted by the proposed change to § 1.17. Moreover, the Commission proposes that FCMs that are not dual registrants do not typically invest in securities that would be subject to reduced haircuts under the SEC's proposed rules, and therefore the change would not have a significant impact on the capital requirements for such FCMs.

Reducing the period of time FCMs can wait for customers' margin call payments before taking a capital charge may increase the capital charge that FCMs take due to tardy margin call payments. As a consequence, proposed § 1.17(c)(5)(viii) would likely force FCMs to hold more capital, or to more diligently collect margin from customers on a prompt basis. The Commission does not have adequate information to estimate the amount of additional capital that FCMs would likely be required to hold, or the cost of that capital, and therefore is not able to quantify this cost at this time.

Request for Comment

Question 7: The Commission requests comment regarding whether FCMs that are not dual registrants typically invest in securities that would be subject to reduced haircutting procedures under the SEC's proposed rules. If an FCM would be subject to reduced haircutting, please quantify the effect that such investments are likely to have on the capital requirements for such FCM.

Question 8: In addition, the Commission requests information that would assist it in quantifying the costs and benefits associated with reducing the number of days an FCM can wait for margin call payments before taking a capital charge. Specifically, how much margin is typically owed by those customers?

Question 9: The Commission also requests comment regarding the amount of additional capital that FCMs would likely be required to hold and the average cost of capital for an FCM. In addition, please provide data and calculations that would enable the Commission to replicate and validate the estimates you provide.

§ 1.20 Futures Customer Funds To Be Segregated and Separately Accounted for

Proposed Changes

As described in the section by section discussion at II.G, the proposed amendments to § 1.20 reorganize the section, but also alter the substance of the section's requirements in certain places.

Proposed § 1.20 includes a new Appendix A which is a template for the acknowledgment letter that FCMs and DCOs must obtain from their depositories. The proposed changes would require FCMs and DCOs to use the letter in Appendix A to provide the acknowledgment that they must obtain, and to clarify that the acknowledgment letter must be obtained before depositing any funds with a depository. The proposed amendments to § 1.20 also requires FCMs and DCOs file the acknowledgment letter with the Commission promptly, and to update the acknowledgment letter whenever there are changes to the business name, address, or account numbers referenced in the letter. Last, proposed § 1.20 requires that customer funds deposited at a bank or trust company must be available for immediate withdrawal upon demand by the FCM or DCO, which effectively prevents them from placing funds into time-deposit accounts with depositories.

Benefits

Proposed § 1.20(d)(2) would require that FCMs and DCOs use the template in Appendix A when obtaining written acknowledgments from their depositories holding futures customer funds. Through this change would require depositories accepting customer funds to: (1) Recognize that the funds are customer segregated funds subject to the Act and CFTC regulations; (2) agree not to use the funds to secure any obligation of the FCM to the depository; (3) agree to allow the CFTC and the FCM's SRO to examine accounts at any reasonable time; (4) agree to provide CFTC and SRO user login to have read-only access to segregated accounts 24 hours a day; (5) and agree to release funds in segregated accounts when instructed to do so by an appropriate officer of FCM, the Director of DSIO, or the Director of DCR.

These acknowledgments and commitments would result in important benefits. First, by acknowledging that the funds are subject to the Act and CFTC regulations, the depository would become accountable for complying with relevant statutory and regulatory requirements related to its handling of those funds. Second, the depository would acknowledge that the FCM is not permitted to use customer funds as belonging to any person other than the customer which deposited them, which would also prohibit an FCM from using customer funds to secure its own obligations. By requiring the FCM or DCO to obtain a statement from depositories holding customer funds acknowledging these limitations on use, the proposed rule would ensure that each depository is aware that the customers' funds cannot be used to secure the FCM's obligations to the depository. Third, the letter constitutes written permission by the depository to allow CFTC or DSRO officials to examine the FCM's customer accounts at any reasonable time, and to view the those accounts online at any time. As a consequence, the letter would enable both the Commission and the DSRO to monitor actual balances at the depository more easily and regularly. This would increase the probability that any discrepancy between balances reported by the FCM on its daily customer segregation account reports, and balances actually held by the depository would be identified quickly by the Commission or the DSRO. Moreover, with standing authorization from the depository to examine customer segregated accounts, both the Commission and DSRO would be better able to move quickly to verify that there is a problem.

The commitment to distribute funds when directed to do so by the Director of DSIO, the Director of DCR, or appropriate officials of the DSRO facilitates the immediate movement of customer funds, and avoids delay in the release such funds which expedites to the transfer the customers' positions or to return the customers' funds without delay.

The acknowledgment letter also provides some assurances to the depository, namely, that it is not liable to the FCM for following instructions to distribute funds from customer segregated accounts at the direction of the Director of DSIO or the Director of DCR and that the depository is not responsible for the FCM's compliance with the Act or Commission regulations beyond what is expressly stated in this letter. The letter places depositories holding customer funds on notice that they must release customer funds without delay when directed to do so by

the Director of DSIO or the Director of DCR. The assurance that the FCM will not hold the depository liable for following instructions from the Director of DSIO or of DCR should reduce this potential cause for delay in time-critical situations. Moreover, under the proposed amendments, depositories must sign the acknowledgment letter in Appendix A in order to receive funds from an FCM or DCO. If some depositories were not willing to sign the letter, it would reduce the number of available depositories for FCMs and DCOs and may force them to move some existing depository accounts.

The benefit of requiring FCMs and DCOs to obtain an acknowledgment letter from their depository prior to or contemporaneously with transferring any customer funds to that depository is that it ensures that all the protections provided for by the depository's consent to the terms of the letter are in place for the full time during which a depository holds customer segregated funds. In other words, it prevents the possibility of a gap in the protections created by the requirements of this section.

By requiring FCMs and DCOs to submit the acknowledgment letters, signed by their depositories, to both the Commission and the relevant SRO, the proposed rules should make it easier for the Commission or relevant SRO to act quickly, when necessary, being confident that the correct legal permissions are in place. Additionally, requiring the letters to be retained for five years past the time when customer segregated funds are no longer held by each depository would ensure that proper documentation of all relevant acknowledgments and commitments is in the possession of each party that relies upon the existence of those commitments in order to effectuate the protections created by this section.

Last, § 1.12(h) requires that funds deposited by an FCM be available for immediate withdrawal. If an FCM places customer funds in time-deposit accounts the depository has the contractual right to require a period of notice from the FCM before distributing funds at the FCM's request. Under the proposed regulation, a period of notice would not be acceptable given the obligation that the FCM has to return customer funds to customers upon request. Moreover, placing funds in a time-deposit account could prevent the DCO, Commission, or Trustee from being able to effect the immediate movement of customer funds if required to do so in the event of a default by the FCM. Requiring that funds be available for immediate withdrawal at the request of the FCM ensures prompt access to customer funds by all concerned.

Prohibiting FCMs from placing customer funds in time-deposit accounts would codify a long-standing staff interpretation that prohibits FCM's from placing customer funds in such accounts.[126] The interpretation and proposed amendment prohibit such deposits because time-deposit accounts, by law, must retain the right to a certain number of days advance notice before allowing a customer to withdrawal funds. This delay could prevent an FCM from returning all customer funds in a prompt manner if those customers all demanded their funds and could prevent the DCO from porting open positions to another FCM in the event that the FCM currently holding those funds defaulted. The benefits of codifying the current staff interpretation are that it will provide additional clarity about the legal force of the requirement, and will put the requirement in a location where relevant market participants are much more likely to see it, which reduces the likelihood that FCMs would violate this prohibition unknowingly.

Costs

FCMs and DCOs are likely to bear some initial and ongoing costs as a result of the proposed amendment requiring them to use the template in Appendix A to obtain the acknowledgment letter from their depositories. Regarding initial costs, the letter includes new requirements that existing depositories want to discuss with the FCM or DCO's staff. In addition, some existing depositories may not be willing to sign the new letter, which would force the FCM or DCO to move any customer funds held by that depository to a different depository, creating certain due diligence and operational costs. The Commission estimates that the cost of obtaining a new acknowledgment letter from each existing depository is between $1,300 and $4,200.[127] Based on conversations with industry participants, the Commission estimates that FCMs and DCOs would have approximately 1–30 depositories each, from which they must obtain a new acknowledgment letter. Therefore, the Commission estimates that the cost of obtaining new acknowledgment letters from existing depositories is between $2,700 and $82,000 per FCM or DCO.[128] In addition, based on conversations with industry participants, the Commission estimates that identifying new potential depositories, conducting necessary due diligence, formalizing necessary agreements, opening accounts, and transferring funds to a new depository is likely to take between three to six months and is likely to require support from compliance attorneys, as well as operations, risk management, and administrative personnel. The Commission estimates that the cost of moving accounts from an existing depository that is not willing to sign the letter is between $50,000 and $102,000.[129]

Ongoing costs include those created by the additional requirements the FCM or DCO will have to explain to new depositories when obtaining the required letter. There may be additional operational costs involved with monitoring depositories for any change that would necessitate updating the letter. The per-entity cost of obtaining the letter from new depositories is likely to be the same as it would for obtaining the letter from existing depositories (*i.e.,*

[126] See Administrative Determination No. 29 of the Commodity Exchange Administration dated Sept. 28, 1937 stating, ''the deposit, by a futures commission merchant, of customers' funds * * * under conditions whereby such funds would not be subject to withdrawal upon demand would be repugnant to the spirit and purpose of the Commodity Exchange Act. All funds deposited in a bank should in all cases by subject to withdrawal on demand.''

[127] This estimate assumes 10–40 hours of time from a compliance attorney and 10–20 hours from an office services supervisor. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*10 = $853.47 and $85.35*40 = $3,413.88. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*10 = $401.54 and $40.15*20 = $803.09. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[128] Total figures are taken from previous calculation. ($1,255.01+$4,216.97)/2 = $2,735.99; $2,735.99*1 = $2,735.99 and $2,735.99*30 = $82,079.69.

[129] This estimate assumes one compliance attorney working full-time for 3–6 months, 50–200 hours from an office services supervisor, 80–160 hours of time from a risk management specialist, and 40–60 hours from an intermediate accountant. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*40 hours/week*4 weeks/month*3 months = $40,966.54 and $85.35*40 hours/week*4 weeks/month*6 months = $81,933.07. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*50 = $2,007.72 and $40.15*200 = $8,030.88. The average compensation for a risk management specialist is $65.33/hour [$100,500 per year/(2000 hours per year)*1.3 is $65.33 per hour]; $65.33*80 = $5,226.00 and $268.84*160 = $10,452.00. The average compensation for an intermediate accountant is $34.11/hour [$52,484.00 per year/(2000 hours per year)*1.3 is $34.11 per hour]; $34.11*40 = $1,364.58 and $34.11*60 = $2,046.88. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

$1,300 and $4,200). The Commission estimates that the ongoing cost associated with monitoring for changes that would require the acknowledgement letter to be updated is between $1,100 and $2,800 per year.[130]

The proposed requirement, embedded in the acknowledgment letter, that depositories provide to the Commission and DSRO online, read-only access to accounts where customer segregated funds are held, would create certain costs for depositories that would likely be passed onto FCMs. The NFA Board of Directors recently approved rule amendments that will require FCMs to provide their respective DSROs with on-line view-only access to customer segregated/secured amount bank account information. NFA has submitted the rule amendments to the Commission for approval.[131] Therefore, the pending NFA rule and the Commission's proposed requirement would require banks and trust companies to provide the Commission and the DSROs with the same read-only access to account information. The Commission estimates that the cost of this additional access is between $270 and $540 per account.[132]

For all other depositories, the Commission believes that providing access read-only access to balances and transactions in cash accounts is possible with existing technology and therefore, for depositories that already provide such access to their customers, the cost of providing that access to the Commission and DSRO is likely to be relatively low. Based on conversations with industry participants, the Commission estimates that on average an FCM or DCO is likely to have approximately 5–30 accounts. The Commission estimates that the initial set-up cost of providing access to each account at depositories that already provide online access to their customers is approximately $270 and $550 per account.[133]

On the other hand, for depositories that do not currently provide such access to their customers, setting up the capability to provide it to the Commission and DSRO will require that the depository implement additional technology. The Commission does not have adequate data to estimate the cost for establishing such a system.

The Commission proposes that the requirement embedded in the acknowledgment letter that depositories consent to release customer funds whenever requested to do so by the Director of DCR or Director of DSIO will not create any additional costs for FCMs, depositories, or market participants.

The Commission does not anticipate any costs associated with proposed § 1.20(h) prohibiting an FCM from placing customer funds in time-deposit accounts since it is codifying a current staff interpretation and FCMs already abide by this standard.

The remaining requirements in proposed § 1.20 are virtually identical to those in the existing rule, but are reorganized in order to improve readability. The changes that are merely the result of reorganizing identical requirements do not result in any costs for market participants.

Request for Comment

Question 10: The Commission requests data from which to estimate the initial and ongoing costs for a depository to establish the capability to provide read-only access to account balances and transaction history.

Question 11: The Commission requests comment from the public regarding the initial and ongoing cost of services provided by vendors that have the ability to provide regular confirmation of balances at depositories on both a scheduled and unscheduled basis. Also, would such services be applicable to custodial accounts, and accounts held at non-bank depositories (e.g. other FCMs or Money Market Mutual Funds)?

Question 12: The Commission requests comment regarding whether depositories currently have systems that provide their customers with continuous read-only access to accounts where securities are held that provide: (1) Real time or end of day balances for each segregated account; and (2) descriptions of the types of assets contained in each account with balances associated with each type of asset. How do the capabilities of systems that provide continuous read-only access to customers vary across different types of depositories, foreign or domestic (i.e. banks, FCMs, DCOs, or Money Market Mutual Funds)?

Question 13: If depositories do not currently have the ability to provide continuous read-only access to accounts holding customer funds that display transactions and balances for those accounts, what costs would be required in order to create such a system?

Question 14: The Commission assumes that the costs and benefits enumerated above capture the range of costs and benefits that would be experienced by each type of depository. The Commission requests comment and quantification regarding any additional costs or benefits that would be experienced by certain types of depositories such FCMs, bank and trust companies, depositories of an international affiliate.

§ 1.22 Use of Customer Funds Restricted

Proposed Changes

As described in the section by section discussion at II.H, the Commission recently approved amendments to the definition of the term ''commodity and/or options customer.'' [134] In order to retain the meaning of the term ''commodity and/or options customer'' as it was originally defined, the Commission is replacing the term with ''futures customer.'' As above, the new term has the same meaning as the original definition of the term that it is replacing, and therefore there are no costs or benefits associated with this change.

In addition, the proposed amendments to 1.22 clarify that the prohibition against use of a futures customer's funds to extend credit to, or to purchase, margin, or settle the contracts of another person applies at all times. Last, the proposed amendments would clarify that in order to comply with the prohibition against using one customer's funds to ''purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit'' [135] of any other

[130] This assumes 20–50 hours per year from an office manager for monitoring costs. The average compensation for an office manager is $55.82/hour [$85,875 per year/(2000 hours per year)*1.3 = $55.82/hour]; $55.82*20 = $1,116.38 and $55.82*50 = $2,790.94. This figure is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[131] A copy of the NFA rule submission is available on the NFA Web site, *www.nfa.futures.org.*

[132] This assumes 4–8 hours per account from a senior database administrator. The average compensation for a senior database administrator is $$68.09/hour [$104,755 per year/(2000 hours per year)*1.3 = $68.09/hour]; $68.09*4 hour = $272.36 and $68.09/hour *8 hours = $554.73. This figure is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[133] This assumes 4–8 hours per account from a senior database administrator. The average compensation for a senior database administrator is $$68.09/hour [$104,755 per year/(2000 hours per year)*1.3 = $68.09/hour]; $68.09*4 hour = $272.36 and $68.09/hour *8 hours = $554.73. This figure is taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[134] The final rulemaking is available on the Commission's Web site, *www.cftc.gov.*

[135] *See* proposed § 1.22. N.B., the current form of § 1.22 also includes a prohibition against using one

Continued

person, the FCM would be required to ensure that its residual interest in futures customer funds exceeds the sum of all its futures customer margin deficits.

Benefits

The benefit of the proposal is that it protects customer funds by requiring continual customer segregation balancing thereby avoiding the potential that an FCM could employ end-of-day balancing to obscure a shortfall the FCM experienced in the middle of the day.

Under current regulations it is not permitted for an FCM to use one customer's funds to purchase, margin, secure or settle positions for another customer. However, the current regulations do not specify how FCMs must comply with this requirement. The proposed rule would specify that FCMs must maintain residual interest in customer segregated accounts that is larger than the sum of all customer margin deficits, which would ensure that the FCM is not using one customer's funds to purchase, margin, secure, or settle positions for another customer. Furthermore, when combined with the reporting requirements in §§ 1.10, 1.32, 22.2, and 30.7, which require the FCM to report both the sum of their customer margin deficits as well as their residual interest in customer segregated accounts, the proposed approach would provide the Commission and the public with sufficient information to verify that FCMs are not using one customer's funds to purchase, margin, secure or settle positions for another customer.

Costs

If the sum of an FCM's customer margin deficits is greater than the residual interest an FCM typically maintains in their customer accounts, then the FCM would have to increase the amount of residual interest it maintains in customer segregated accounts, which would reduce the range of investment options the FCM has for those additional funds and may prompt the FCM to maintain additional capital to meet operational needs. On the other hand, if an FCM typically maintains residual interest in customer segregated accounts that is greater than the sum of their customer margin deficits, then the proposed rule would not create any additional costs. In the past, the Commission has not required FCMs to report the sum of their customers' margin deficits. Therefore, the Commission does not have adequate information to determine whether FCMs typically hold residual interest that is greater than the sum of their customers' margin deficits and cannot estimate the cost of the proposed rule.

Request for Comment

Question 15: The Commission requests comment regarding whether FCMs typically maintain residual interest in their customer segregated accounts that is greater than the sum of their customer margin deficits, and data from which the Commission may quantify the average difference between the amount of residual interest an FCM maintains in customer segregated accounts and the sum of customer margin deficit.

Question 16: How much additional residual interest would FCMs hold in their customer segregated accounts in order to comply with the proposed regulation? What is the opportunity cost to FCMs associated with increasing the amount of capital FCMs place in residual interest, and data that would allow the Commission to replicate and verify the calculated estimates provided.

Question 17: The Commission request information regarding the additional amount of capital that FCMs would likely maintain in their customer segregated accounts, if any, to comply with the proposed regulation. What is the average cost of capital for an FCM? Please provide data and calculations that would allow the Commission to replicate and verify the cost of capital that you estimate?

§ 1.23 Interest of Futures Commission Merchants in Segregated Funds; Additions and Withdrawals

Proposed Changes

As described in the section by section discussion at II.I, the proposed text changes the term ''customer funds'' to ''futures customer funds.'' This is a conforming change in order to retain the same meaning once the term ''customer'' is redefined in § 1.3.[136] The Commission anticipates that there are no costs or benefits associated with this change.

The proposed § 1.23 also places new restrictions regarding an FCM's withdrawal of residual interest funds for proprietary use. Under the proposed § 1.23, an FCM cannot withdraw funds for proprietary use unless they have prepared the daily segregation calculation from the previous business day and must adjust for any activity or events that may have decreased residual interest since close of business the previous day. In addition, an FCM is only permitted to withdrawal more than 25% of its residual interest for proprietary use within one day if it: (1) Obtains a signature from the CEO, CFO or other senior official as described in § 1.23(c)(1) confirming approval to make such a withdrawal; and (2) sends written notice to the CFTC and DSRO indicating that the requisite approvals from the CEO, CFO or other senior official has been obtained, providing reasons for the withdrawal, listing the names and amounts of funds provided to each recipient, and providing an affirmation from the signatory indicating that he or she has knowledge and reasonable belief that the FCM is still in compliance with segregation requirements after the withdrawal.

In addition, if the FCM drops below its target threshold for residual interest because of a withdrawal of residual interest for proprietary use, the next day it must either replenish residual interest enough to surpass its target, or if senior leadership believes the original target is excessive, the FCM may revise its target in accordance with its policies and procedures established in proposed § 1.11.

Benefits

The proposed restrictions on withdrawals of residual interest provide an additional layer of protection for customer funds contained in segregated accounts. An FCM may withdraw residual interest as long as it always maintains sufficient FCM funds in the account to cover any shortfall that exists in all of its customers' segregated accounts. However, as a practical matter, the segregation requirements fluctuate constantly with market movements, and customer surpluses or deficits also fluctuate depending on the speed with which customers meet margin calls. As a consequence, an FCM is not expected to have a precise, real-time knowledge of the amount of residual interest it has in a segregated account. The Commission recognizes that any precise, real-time, single calculation would almost immediately become obsolete as the value of customers' accounts and their obligations to the FCM continue to fluctuate. Moreover, a sufficient amount of residual interest to cover deficiencies in customers' accounts at one point in time may be inadequate to cover such deficiencies an hour later, or even a few minutes later. Therefore, it is important

customer's funds to ''to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such customer or commodity option customer.''

[136] The Commission recently approved final amendments to § 1.3 that revised the definition of the term ''customer'' to include commodity customers, options customers, and swap customers. A copy of the **Federal Register** release is available on the Commission's Web site, *www.cftc.gov.*

for an FCM to maintain sufficient residual interest to cover both current deficiencies in customer accounts as well as any additional deficiencies that could develop over a relatively short period of time. Restrictions on withdrawals of residual interest help to ensure that the FCM does not withdraw too much residual interest, either knowingly or unknowingly, and jeopardize customer funds in the segregated account.

Prohibiting any withdrawal of residual interest until the customer segregation account calculations are complete for the previous day and requiring the FCM take into account any subsequent developments in the market or the account that could impact the amount of residual interest before withdrawing funds protects customer funds by reducing the likelihood that lack of current information could cause the FCM to make a withdrawal from customer funds that is large enough to cause the account to fall below its segregated funds requirement.

In addition, the proposed amendment would require several steps in order for an FCM to remove more than 25% of their residual interest in a single day. Large, single-day withdrawals of the FCM's residual interest in the customer segregated account could be an indication of current or impending capital or liquidity strains at the FCM. The additional steps ensure that senior management is knowledgeable of and accountable for such withdrawals, that no shortfall in the customer segregated accounts is created by the withdrawals and that the CFTC and DSRO are both alerted and can monitor the FCM and its segregated accounts closely over subsequent days and weeks. Additional monitoring, in turn, would help to ensure that the integrity and sufficiency of the FCM's customer segregated accounts are carefully protected. In addition, notifying the CFTC and DSRO gives both an opportunity to ask questions about the FCM's reasonable reliance on its estimations of the adequacy of its funds necessary to meet segregation requirements. Such questions may give the Commission and DSRO comfort that the transaction does not indicate any strain on the FCMs financial position, or conversely, may raise additional questions and alert the CFTC and DSRO to the need for heightened monitoring of the FCM or further investigation of its activities. Also, while the proposed regulations would reduce the risk that customer funds could be missing in the event of an FCM's bankruptcy, the proposed rule would establish a second layer of protection by ensuring that the Commission has records regarding the name and address of parties receiving funds from the distribution of residual interest.

In addition, requiring an FCM to replenish its residual funds the following day any time a withdrawal causes it to drop below the FCM's target amount helps to ensure that residual interest is not used by the firm to address liquidity needs in other parts of the firm unless those needs are very short-term in nature (*i.e.,* less than 24 hours).

Costs

These procedural requirements will create some costs for FCMs. Restricting an FCMs ability to withdraw residual interest until daily calculations have been completed may prevent the FCM from withdrawing funds quickly in order to meet certain operational needs, or to take advantage of specific investment opportunities. This restriction may also force the FCM to hold additional capital in order to reduce the potential that it would need funds from its residual interest in order to meet any operational needs. The Commission does not have adequate information to estimate the amount of additional capital that an FCM might be likely to hold, or the cost of capital for those funds. Moreover, calculating the opportunity cost for an FCM's potential missed opportunities is not possible since, by definition, they depend on the alternative opportunities available to the FCM and the Commission does not have adequate information to determine what those opportunities might be.

In addition, abiding by the procedures for withdrawals of residual interest for proprietary use, whether the withdrawals are less than or greater than 25% of the FCM's residual interest, would create operational costs as these percentages must be calculated and requisite permissions will require time to obtain. The additional cost created by procedures that are required for additional withdrawals below 25% of the FCM's residual interest will depend significantly on the procedures the FCM develops, and the extent to which the FCM has already implemented similar procedures. The Commission does not have adequate information to estimate these incremental costs. If an FCM withdraws more than 25% in a given day they have to get certain signatures and have to send a notification to the Commission. It is also likely that the Commission would follow up with questions about the withdrawal. The Commission proposes that obtaining the necessary signatures, reviewing the notification sent to the Commission, and conducting any follow-up conversations would require time from an attorney and office staff personnel. Therefore, the Commission estimates that the additional cost to an FCM for complying with procedures to withdraw 25% or more of their residual interest in a single day is likely to be between $850 and $1,100 each time an FCM needs to make such withdrawals.[137]

Request for Comment

Question 18: The Commission invites comment regarding the amount of additional capital that FCMs would likely hold because of restrictions on their ability to withdraw residual interest and the cost of capital for those funds.

Question 19: In addition, the Commission requests comment regarding the extent to which FCMs already have procedures in place that would satisfy the requirements in §§ 1.11 and 1.23 regarding withdrawals of residual interest. For an FCM that do not have such procedures in place already, please quantify the additional cost that the FCM will bear as a consequence of complying with any policies and procedures it may develop and implement in order to satisfy the requirements of §§ 1.11 and 1.23 with respect to withdrawals of residual interest.

§ 1.25 Investment of Customer Funds

Proposed Changes

As described in the section by section discussion at II.J, § 1.25 permits FCMs and DCOs to use customer funds to purchase securities from a counterparty under an agreement for the resale of the securities back to the counterparty. This type of transaction is often referred to as a ''repo,'' and in effect, is a collateralized loan by the FCM to its counterparty. Currently, § 1.25(b)(3)(v) establishes a counterparty concentration limit, prohibiting FCMs and DCOs from using more than 25% of the total funds in the customer segregated account to conduct reverse repos with a single counterparty. The proposed amendment would expand the definition of a counterparty to include additional entities under common ownership or control. The proposed amendment

[137] This assumes 6–8 hours of a compliance attorney's time and 6–8 hours of an office manager's time. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*6 = $512.08 and $85.35*8 = $682.78. The average compensation for an office manager is $55.82/hour [$85,875 per year/(2000 hours per year)*1.3 = $55.82/hour]; $55.82*6 = $334.91 and $55.82*8 = $446.55. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

incorporates the Commission's interpretation of the existing rule, and therefore does not alter its meaning. Therefore, the Commission does not anticipate that the proposed amendment will create any costs or benefits.

The additional proposed changes to § 1.25 are conforming amendments proposed in order to harmonize this section with other amendments proposed in this release, and therefore do not create any additional costs or benefits.

§ 1.26 Deposit of Instruments Purchased With Customer Funds

Proposed Changes

As described in the section by section discussion at II.K, proposed § 1.26 would change the term ''commodity or option customers'' to ''futures customers.'' This is a conforming change in order to retain the same meaning once the term ''customer'' is redefined in § 1.3.

In addition, the other changes proposed for § 1.26(a–b) require that FCMs and DCOs obtain a written acknowledgment letter from depositories in accordance with the requirements established in § 1.20. This change introduces significant additional specificity regarding the timing and content of the letter that FCMs and DCOs must obtain from their depositories. The specifics of those requirements, as well as the costs and benefits of them, are detailed in the discussion of costs and benefits for § 1.20, discussed in the cost benefit considerations section related to § 1.20.

If, however, an FCM or DCO invests funds with a money market mutual fund and those funds are held directly by the money market mutual fund or its affiliate, then the FCM or DCO must use the acknowledgment letter proposed in Appendix A of § 1.26 rather than the acknowledgment letters in the appendices of § 1.20. The content of the letter in § 1.26 is identical to those in § 1.20 except that it includes three additional provisions related specifically to funds held by the money market mutual fund or its affiliate (''MMMF''). Specifically, it requires that: (1) the value of the fund must be computed and made available to the FCM or DCO by 9:00 a.m. of the following business day; (2) that the fund must be legally obligated to redeem shares and make payments to its customers (i.e. the FCM or DCO) by the following business day; and (3) the money market mutual fund does not have any agreements in place that would prevent the FCM or DCO from pledging or transferring fund shares.

Benefits

The benefits are largely the same as for the acknowledgment letters required in § 1.20, described above in the cost benefit section related to § 1.20. However, requiring FCMs and DCOs to have Money Market Mutual Funds (''MMMFs'') sign a different acknowledgment letter if customer funds are held directly with the money market mutual fund or its affiliate has some benefits.

First, requiring the MMMF to compute the value of the fund and make that available to the FCM or DCO by 9:00 a.m. the following business day ensures that FCMs will have the information they need in order to produce their daily segregation calculations by 12:00 p.m. the following business day (*i.e.,* three hours later), which is an existing requirement for FCMs.[138] This is important not only because it enables the FCM to comply with the requirement to produce segregation calculations by 12:00 p.m. the following day, but because under the proposed rule, FCMs would not be allowed to withdraw residual interest until the daily segregation calculations are completed. Second, by requiring the fund to redeem shares and make payments to their customers by the following business day, the proposed requirement prohibits MMMFs from entering into any agreement with an FCM or DCO that gives the MMMF a contractual right to delay payment, thus preventing similar risks to what would occur if FCMs were allowed to place funds in time-deposit accounts. Last, by prohibiting the MMMF from imposing restrictions that would prevent the FCM or DCO from pledging or transferring fund shares, the letter would ensure that FCMs are able to use their shares as collateral at the DCO and that those shares could be transferred from one FCM to another in the event of the first FCM's default.

Costs

As discussed above in the cost benefit considerations section related to § 1.20 the NFA already requires electronic read-only access to customer accounts, so the Commission does not anticipate that providing the same access to the Commission will create additional costs.

In addition, if an FCM or DCO currently has an account with a money market mutual fund that, either directly or through an affiliate, holds its own funds, and that fund is either not compliant with the additional provisions of the letter in Appendix A § 1.26 or is unwilling to sign the proposed acknowledgment letter, the FCM or DCO would bear some costs related to identifying a compliant money market mutual fund, conducting due diligence, and moving its accounts to that fund. This would force the FCM or DCO to identify a new MMMF that is qualified to accept its customer funds, creating the same costs that are described above in the cost benefit considerations section related to § 1.20.

Request for Comment

Question 20: The Commission requests comment regarding the likelihood that money market mutual funds holding segregated funds from FCMs or DCOs are not compliant with the additional terms contained in the proposed acknowledgment letter. In addition, what costs would an FCM or DCO bear when identifying a compliant money market mutual fund and transferring their customer funds to that money market?

Question 21: In addition, the Commission requests comment regarding whether the requirements contained in the acknowledgment letter, discussed in § 1.20, would impact money market mutual funds differently from any other depositories.

§ 1.29 Gains and Losses Resulting From Investment of Customer Funds

Proposed Changes

As described in the section by section discussion at II.L, under the Commission's existing regulations, § 1.29(a) states that FCMs or DCOs investing customer funds in § 1.25 investments are entitled to the return on those investments. Proposed § 1.29(b) provides that FCMs or DCOs investing customer segregated funds in instruments described in § 1.25 also bear sole responsibility for the losses that result from those investments.

Benefits and Costs of the Proposed Changes

This change was recommended by FIA, which stated its belief that the FCM or DCO's responsibility for losses in § 1.25 investments ''is clear and is implicit in the Act and the Commission's rules.'' [139] The Commission believes that market participants already recognize this and act accordingly. Therefore the Commission does not believe that

[138] *See* §§ 1.32, 22.2, and 30.7.

[139] FIA, ''Initial Recommendations for Customer Funds Protection.'' Available at: *http://www.futuresindustry.org/downloads/Initial_Recommendations_for_Customer_Funds_Protection.pdf.*

proposed § 1.29(b) would create any additional costs.

§ 1.30 Loans by Futures Commission Merchants; Treatment of Proceeds

Proposed Changes

As described in the section by section discussion at II.M, § 1.30 permits the FCM to lend its own funds to a customer on securities and property pledged by the customer, effectively performing a collateral transformation service. The proposed amendment to § 1.30 clarifies that, while an FCM may provide secured loans to a customer, it may not make loans to a customer on an unsecured basis or use a customer's futures or options positions as security for a loan from the FCM to that customer.

Benefits

The proposed prohibition against FCMs providing unsecured loans to customers reduces counterparty risk borne by the FCM position because it prevents the FCM from accumulating exposures to customers that have not margined their positions. In addition, the proposed rule would prohibit an FCM from using a customer's positions to secure loans made to customers, which would also reduce the FCM's counterparty risk. If an FCM used a customer's positions to secure a loan to that customer, the FCM would be using the same collateral to secure two different liabilities: the liability associated with the open position; and the liability associated with the unsecured loan. By prohibiting FCMs from using a customer's positions to secure a loan to that customer, the proposed rule would prevent the additional exposure that would otherwise result from using the same collateral to secure two different liabilities, which again, reduces the FCM's counterparty risk.

In addition, to the extent that the proposed change would force customers to obtain such loans from another lender, it diversifies the counterparty risk across multiple entities. That benefits the FCM that would otherwise bear more concentrated customer risk, and likely would be good for the markets more generally because of the additional protection that it provides to any clearinghouse of which the FCM is a member.

Costs

Regarding costs associated with the proposed restriction—customers that need or prefer to use borrowed funds to meet their initial and maintenance margin requirements for certain positions would be forced to obtain loans necessary to fund their futures or options positions from another lender. That would increase the customer's operational costs since they would have to transfer funds from one institution to another and would have to administer both accounts. In addition, it is likely that lenders will conduct more due diligence than would be the case if the FCM were to loan the requisite funds, which will create additional costs related to such a loan, both for the customer and for the party lending the funds.

Request for Comment

Question 22: The Commission requests comment regarding how often FCMs currently make loans to customers on either a secured or unsecured basis, and what the processes and terms typify such loans (including details regarding the process for evaluating credit risk, size of such loans, payment terms, collateral, and any other details that commenters believe the Commission should consider).

Question 23: In addition, the Commission requests information regarding the additional operational costs that customers would bear if they have to obtain a loan from an entity other than the FCM holding their funds in a customer segregated account. If possible, please quantify the additional costs.

§ 1.32 Reporting of Segregated Account Computation and Details Regarding the Holding of Customer Funds

Proposed Changes

As described in the section by section discussion at II.N, The proposed changes would allow an FCM that is not a dual registrant to follow the same procedures as dual registrants (FCM/BDs) when assessing a haircut to securities purchased with customer funds if the FCM determines that those securities have minimal credit risk. This is the same change as is proposed in § 1.17 except that in § 1.17 the proposed change refers to securities purchased by an FCM with its own capital, whereas the proposed change here would apply to securities purchased with customer funds. The change proposed here would create the same costs and benefits as described above in the cost benefit considerations section related to § 1.17.

In addition, the proposed changes would: (1) Require FCMs to report daily Segregation Statements to the Commission and their DSRO electronically by noon the following business day; (2) require that twice per month, each FCM submit a detailed list of depositories report listing of all the depositories and custodians where customers segregated funds are held, including the amount of customer funds held by each entity and a break-down of the different categories of § 1.25 investments held by each entity; and (3) require that the detailed list of depositories be submitted to the Commission electronically by 11:59 p.m. the following business day and that both Segregation Statements and Detailed list of depositories be retained by the FCM in accordance with § 1.31.

Benefits

Requiring FCMs to submit their daily calculations to the Commission and DSRO, together with the proposed amendments to §§ 1.20 and 1.26 giving the Commission and DSRO electronic access to view the balances of all depository accounts where customer segregated funds are held, will enable the Commission and DSRO to better protect customer funds by more closely monitoring for any discrepancies between the assets in segregated accounts reported by the FCM and their depositories. The ability of the Commission and DSRO to check for discrepancies more regularly, without notice, is likely to provide an additional disincentive to fraud. Moreover, it will enable both the Commission and DSROs to monitor for any trends that would indicate operational or financial problems are developing at the FCM, which would give the Commission an opportunity to enhance its supervision and to intervene, if necessary, to protect customer segregated funds.

The detailed list of depositories would provide additional information to the Commission and DSRO beyond what would be available to both by virtue of the electronic read-only access that has been proposed in §§ 1.20, 1.26, and 30.7. First, the detailed list of depositories will provide additional account detail including the types of securities and investments that constitute each account's assets rather than existing reports that only include the total value securities. Second, the reports will account for any pending transactions that would not necessarily be apparent when viewing a depository account online. Third, FCMs will, in these reports, provide to the Commission and DSRO a reconciled balance, which would not be available to the Commission or DSRO simply by viewing an FCM's depository accounts online. Each of these additional forms of information would enable the Commission and DSRO to provide better oversight and create additional accountability for the FCM.

Costs

FCMs are already calculating segregated funds information daily and reporting the results to the NFA via WinJammer by noon the following day. Similarly, the detailed list of depositories that would be required to be submitted twice per month is already required by NFA to be produced and submitted to NFA via WinJammer.[140] Requiring FCMs to submit these reports to the Commission via the same platform should not create any additional costs.

§ 1.52 Self-Regulatory Organization Adoption and Surveillance of Minimum Financial Requirements

Proposed Changes

As described in the section by section discussion at II.O, the proposed amendments to 1.52 would revise the supervisory program that SROs are required to create and adopt. In addition, for SROs that choose to delegate the function to examine FCMs that are members of two or more SROs to a DSRO, the amended rules would require a plan that establishes a Joint Audit Committee which, in turn, must propose, approve, and oversee the implementation of a Joint Audit Program. The amended rules specify a number of additional requirements for the SRO supervisory program as well as for the Joint Audit Program.

Benefits

Regarding SROs' supervisory programs, the proposed amendments would provide significant additional protection to FCMs' counterparties, investors, and customers by ensuring that SRO audits of member FCMs are thorough and effective. The proposed amendments would help to ensure thorough audits by requiring that an SRO's audit program be designed to address ''all areas of risk to which futures commission merchants can reasonably be foreseen to be subject,'' that the scope and focus of such audits would be determined by the risk profile that the SRO develops for each FCM, and that the audit itself include both controls testing as well as substantive testing. The last requirement, in particular, would help to ensure that audits give adequate attention to testing and review of internal controls, which are critical to help ensure that each FCM is not only compliant with capital and segregation requirements at the time of the audit, but that they continue to operate in such a manner after the audit is completed by preventing fraud or operational errors that could jeopardize the FCM and its customers.[141]

By requiring that the supervisory program for the SRO must be compliant with U.S. Generally Accepted Auditing Standards and standards prescribed by the Public Company Accounting Oversight Board, the proposed rules would ensure that the SROs' supervisory programs draw from established best practices, and that they address the full range of issues that would impact the effectiveness of the SRO's audits of FCMs. This benefit is enhanced by the proposed list of specific issues that each SRO must address in the standards they develop for their supervisory program. And by promoting audits that are thorough, the proposed rules would, again, promote protection of the FCM's counterparties, investors, and customers.

By requiring that an examinations expert evaluate the SRO's supervisory program at least once every two years, and that the results of such examinations include a discussion and recommendation of any new or best practices, the proposed rules would ensure that the supervisory program and SRO audits continue to build on best practices, for audits, which further promotes thorough and effective audits of FCMs.

The proposed rules for the Joint Audit Program would require the Joint Audit Program to: (1) Establish standards covering all the same issues; (2) require controls testing as well as substantive testing; (3) address all areas of risk to which the registered FCM can reasonably be foreseen to be subject; (4) conform to U.S. generally accepted auditing standards and as well as those prescribed by the Public Company Accounting Oversight Board; and (5) have an examinations expert evaluate the Joint Audit Program at least once every two years. Therefore, the proposed rules would produce identical benefits related to audits conducted by a DSRO.

In addition, by requiring that the DSRO audits include examination of an FCM's compliance with rules and regulations governing minimum net capital, obligations to segregate customer funds, financial reporting requirements, etc., the proposed rule would ensure that these critical elements of the FCM's operations and finances are reviewed during each audit. Each of these elements safeguard customers. Additionally, by requiring the Joint Audit Committee to develop procedures to identify high risk firms and perform enhanced monitoring of such firms, the proposed rules would help to ensure that any risk to customer funds that begins to materialize (e.g. the FCM's residual interest begins to drop) is identified and corrected quickly, thus reducing the risk of a loss of customer funds.

In addition, commenters at the Commission's August 9th roundtable on customer protection noted that when audits take several months to complete, the findings are less relevant when they are delivered to the business than they would have been if they were communicated more promptly.[142] Therefore, by requiring that the Joint Audit Program maintain adequate levels of staff with adequate training and experience, the proposed requirements would facilitate timely completion of audits, which is likely to enhance the protection of customer funds by promoting more prompt identification and correction of weaknesses identified in such audits. Moreover, if auditors are not independent of the FCM they are auditing, their findings may be compromised by conflicts of interest. By requiring standards related to independence together with annual ethics training, the proposed rule would help to ensure that the results of any audit conducted by the DSRO are not compromised by the influence of any conflict of interests. Each of these, in turn, facilitate thorough, effective, and timely audits, which help protect the FCM's customers, counterparties, and investors by ensuring that the FCM's financial reports are accurate, and that internal controls are reviewed and tested.

Costs

SROs are already required to establish and operate supervisory programs for auditing FCMs. The proposed amendments require further detail and documentation with regard to specific elements of such supervisory programs. The Commission estimates that the cost for developing these policies and procedures would be between $20,700 and $31,000 per SRO.[143]

[140] *See* Segregated Investment Detail Report at: *http://www.nfa.futures.org/NFA-compliance/NFA-futures-commission-merchants/fcm-reporting.pdf.*

[141] While many auditors and market participants have noted the importance of controls testing, the Commission understands that currently, many audits tend to emphasize substantive testing and give lesser attention to controls testing. *See* Public Roundtable to Discuss Additional Customer Protections, August 9, 2012. A recording of the roundtable is available at: *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff080912. See* [customer protection roundtable from 8/9].

[142] *See* Public Roundtable to Discuss Additional Customer Protections, August 9, 2012. A recording of the roundtable is available at: *http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff080912 See* [roundtable on Aug 9th].

[143] This estimate assumes 160–240 hours of time from both a compliance attorney and a senior

The Joint Audit Committee would have to develop policies and procedures concerning the application of the Joint Audit Program in the examination of FCMs. The standards would have to, at minimum, conform to the U.S. GAAS and would also have to address the items in § 1.52(c)(2)(iii). The development of such policies and procedures is likely to require input from one attorney and one senior accountant at each SRO, and therefore the Commission estimates that such involvement will cost each SRO between $2,400 and $6,000.[144] In addition, the work required to further develop Joint Audit Program is likely to be supported by full time staff at the DSRO. The Commission estimates that such support will cost the DSRO between $18,000 and $26,400.[145] In addition the Joint Audit Program would be required to have an examinations expert review the policies and procedures they develop.

Ongoing costs to the SRO and Joint Audit Program would include fees charged by the examinations expert for a review every other year, the incremental cost of more extensive controls testing when auditing each FCM, and the incremental cost resulting from standards that the SRO develops to comply with the list of standards that must be addressed in the supervisory program.[146] The Commission does not have adequate information to estimate the ongoing costs for biennial reviews by an examinations expert, or the incremental costs of additional controls testing or ongoing compliance with standards that the FCMs develop pursuant to § 1.52(c)(2)(iii).

Request for Comment

Question 24: The Commission requests comment regarding the costs associated with increased controls testing. To what extent do SROs currently conduct controls testing when auditing FCMs? What additional testing would likely be involved in order to comply with the proposed regulations?

Question 25: In addition, the Commission requests comment regarding the costs for an expert examiner to conduct a review such as the one contemplated in the proposed rules.

Question 26: Also, regarding costs associated with the Joint Audit Committee and Joint Audit Program, which costs are likely to be borne by the SROs and which are likely to be borne by the DSROs?

§ 1.55 Public Disclosures by Futures Commission Merchants

Proposed Changes

As described in the section by section discussion at II.P, the proposed rules would add new provisions to the disclosure document that FCMs are required to provide to prospective customers, detailed in § 1.55(b). The new provisions would require the disclosure document to contain a statement that: (1) Customer funds are not protected by insurance in the event of the bankruptcy or insolvency of the FCM, or if customer funds are misappropriated in the event of fraud; (2) customer funds are not protected by SIPC, even if the FCM is a BD registered with the SEC; (3) customer funds are not insured by a DCO in the event of the bankruptcy or insolvency of the FCM holding the customer funds; (4) each customer's funds are not held in an individual segregated account by an FCM, but rather are commingled in one or more accounts; (5) FCMs may invest funds deposited by customers in investments listed in § 1.25; and (6) funds deposited by customers may be deposited with affiliated entities of the FCM, including affiliated banks and brokers.

In addition, the proposed rule would require each FCM to provide a Firm Specific Disclosure Document that would address firm specific information regarding its business, operations, risk profile, and affiliates that would be material to a customer's decision to entrust funds to and do business with the FCM.

As stated above, the Firm Specific Disclosure Document would be made available on the FCM's Web site and would provide material information about: (1) General firm contact information; (2) the names, business contacts, and backgrounds for the FCM's senior management and members of the FCM's board of directors; (3) a discussion of the significant types of business activities and product lines that the FCM engages in and the approximate percentage of the FCM's assets and capital devoted to each line of business; (4) the FCM's business on behalf of its customers, including types of accounts, markets traded, international businesses, and clearinghouses and carrying brokers used, and the futures commission merchant's policies and procedures concerning the choice of bank depositories, custodians, and other counterparties; (5) a discussion of the material risks of entrusting funds to the FCM and an explanation of how such risks may be material to its customers; [147] (6) the name and Web site address of the FCM's DSRO and the location of annual audited financial statements; (7) a discussion of any material administrative, civil, criminal, or enforcement actions pending or any enforcement actions taken in the last three years (8) a basic overview of customer fund segregation, FCM collateral management and investments, and of FCMs and joint FCM/BDs; (9) information regarding how customers may file complaints about the FCM with the Commission or appropriate DSRO; (10) certain financial data from the most recent month-end when the disclosure document is prepared; and (11) a summary of the FCMs current risk practices, controls and procedures.

FCMs would be required to update the Firm Specific Disclosure Document at least annually.

As described in the section by section discussion at II.P, FCMs would also be

accountant. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35 *160 = $13,655.51 and $85.35 *240 = $20,483.27. The average compensation for a senior accountant is $44.18/hour [$67,971.00 per year/(2000 hours per year)*1.3 is $44.18 per hour]; $44.18*160 = $7,068.98 and $44.18*240 = $10,603.48. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[144] This estimate assumes 20–50 hours of time from both a compliance attorney and an intermediate accountant. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*20 = $1,706.94 and $85.35*50 = $4,267.35. The average compensation for an intermediate accountant is $34.11/hour [$52,484.00 per year/(2000 hours per year)*1.3 is $34.11 per hour]; $34.11*20 = $682.29 and $34.11*50 = $1,705.73. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[145] This estimate assumes 320–400 hours from an office services supervisor and 40–80 hours from both a compliance attorney and a senior accountant. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*320 = $12,849.41 and $40.15*400 = $16,061.76. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*40 = $3,413.88 and $85.35*80 = $6,827.76. The average compensation for a senior accountant is $44.18/hour [$67,971.00 per year/(2000 hours per year)*1.3 is $44.18 per hour]; $44.18*40 = $1,767.25 and $44.18*80 = $3,534.49. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[146] *See* § 1.52(c)(2)(iii).

[147] The material risks addressed must include, without limitation, ''the nature of investments made by the futures commission merchant (including credit quality, weighted average maturity, and weighted average coupon); the futures commission merchant's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the futures commission merchant created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments.''

required to disclose on their Web sites their daily Segregation Schedule, daily Secured Amount Schedule, and daily Cleared Swaps Segregation Schedule. Each FCM would be required to maintain 12 months of the segregation and secured schedules on its Web site. Each FCM would also be required to disclose on its Web site as well as summary schedules of its adjusted net capital, net capital, and excess net capital for the 12 most recent month-end dates as well as the Statement of Financial Condition, Segregation Schedule, Secured Amount Schedule, Cleared Swaps Segregation Schedule, and all footnotes related to the above statements and schedules from its most current year end annual report that is certified by an independent public accountant.

Benefits

As explained above in the section by section discussion at II.P, current regulations require FCMs to provide a risk disclosure to potential customers before accepting customer funds. That risk disclosure statement is primarily intended to provide a customer with disclosure of the market risks of engaging in futures trading. The proposed additions to that disclosure would help to ensure that customers are aware of certain non-firm-specific risks that have been relevant in recent FCM bankruptcies and that could be relevant in the event of future FCM bankruptcies or insolvencies.

The Firm Specific Disclosure Document that would be required by the proposed rules would address firm-specific risk, which would give potential customers additional information that they could use when conducting due diligence and selecting an FCM. By requiring that the disclosure address several specific topics, the proposed rule would ensure that certain topics that are relevant are addressed, even if potential customers might not otherwise think to ask about them when selecting or conducting due diligence on potential FCMs.

Specifically, by requiring the disclosure to provide information about the business activities and product lines the FCM engages in, and the percentage of the FCM's assets and capital that are used in each type of activity, the proposed rules would assist customers in acquiring information that may assist them in determining the extent to which the FCM's business is focused on providing the types of services that the customer needs, and the extent to which other business interests could impact either the focus or stability of the FCM.

By requiring that FCMs provide the policies and procedures by which it selects depositories, the proposed rules would assist potential and existing customers in evaluating the sufficiency of due diligence conducted by the FCM when selecting such depositories. This additional measure of transparency would incent FCMs to be rigorous in conducting such due diligence because potential or existing customers that are not satisfied with the FCM's policies and procedures in this respect could take their business elsewhere.

Requiring FCMs to discuss their business on behalf of customers, the proposed rules would ensure that customers and potential customers are able to make a more thorough assessment of risks that the FCM or customer funds held by the FCM might bear due to the markets or businesses in which the FCM is active, the clearinghouses and carrying brokers it uses, or the depositories that hold funds on behalf of the FCM. Such an assessment could impact customers' decisions as they select the FCM(s) with which they will conduct business. Moreover, additional transparency would promote market discipline, which would provide additional incentive for FCMs to manage such risks diligently.

By requiring FCMs to disclose material risks together with an explanation of how such risks may be material to its customers, the proposed rules would ensure that the FCM is responsible to identify and communicate such risks, which helps to ensure that potential and existing customers would be aware of those risks when placing or keeping funds on deposit with the FCM. In the absence of such a requirement, potential or existing customers may not know the FCM's business as well as the FCM does, and therefore may not ask about certain risks that are material to customers, may not have access to adequate information to determine the magnitude of such risks, or may not understand how certain risks could impact the FCM's customers.[148] The proposed amendment would make the FCM responsible both to identify and provide information regarding all material risks and to provide explanations that would help educate customers about how such risks could affect them.

Requiring FCMs to provide information regarding how they may file a complaint about the FCM with the Commission or the firm's DSRO would help to ensure that if customers perceive problems at an FCM, those concerns are communicated to the proper regulatory bodies, giving the Commission and DSRO an opportunity to investigate further, if appropriate. As a consequence, the required information would promote more effective oversight by the Commission and DSRO.

By requiring that FCMs provide an overview of customer fund segregation and FCM collateral management and investment, the proposed rules would promote the protection of customer funds by enhancing market discipline through customer education. The proposed rules would help customers understand how statutory and regulatory requirements are designed to provide protections for their funds, and what steps FCMs must take in order to comply with such regulations. Educated customers, in turn, provide an additional layer of accountability for the FCM in complying with such requirements. Moreover, customers will be better able to understand public disclosures regarding disciplinary actions against FCMs, updates regarding material risks to customer funds, financial disclosures made by the FCM, and to make informed decisions in response.

In particular, the disclosures proposed in § 1.55(k)(10) could assist customers in evaluating fellow customer risk that they would bear at each FCM with which they consider doing business. By requiring FCMs to disclose specific financial data as of the most recent month-end when the disclosure document is produced, the proposed requirements would further ensure that all customers have access to data that would be helpful when considering potential risks associated with entrusting funds to the FCM.

Requiring FCMs to disclose the dollar value of their proprietary trading margin requirements as a percentage of margin required for futures customers, Cleared Swap Customers, and 30.7 Customers would help customers understand the magnitude of risk created by the FCM's proprietary positions relative to the magnitude of risk created by customers' positions. This information could prompt customers to ask additional questions about the relationship between the risks created by the firm's

[148] In the Public Roundtable to Discuss Additional Customer Protections on August 9, 2012, participants suggested that FCMs may not provide all customers and potential customers with equivalent access to firm-specific data. *See http://www.cftc.gov/PressRoom/Events/opaevent_cftcstaff080912.*

As a result, larger customers may be able to conduct more thorough due diligence when selecting an FCM. The proposed requirements would help ensure that all customers have access to FCM-specific data that is helpful when evaluating the risks that would be relevant to customer funds entrusted to an FCM.

proprietary trading and trading on behalf of customers. It could also prompt questions about how the firm's operations related to proprietary trading may impact their operations related to customer accounts.

By requiring FCMs to disclose the number of customers that constitute 50% of the FCMs total funds held for futures customers, Cleared Swaps Customers, and 30.7 Customers, customers would have additional insight into the potential exposure that the FCM could have due to a default by one of its largest customers.

The aggregate notional value of non-hedged, principal over-the-counter transactions into which the FCM has entered, when calculated and reported for each class of swaps, would give customers some sense of the potential exposure the FCM has due to potential changes in the value of its proprietary portfolio.

The aggregate amount of financing FCMs provide for customer transactions involving illiquid financial products would give customers additional insight into the potential challenges FCMs would face if a fellow customer defaulted and the FCM had to liquidate such products in order to mitigate the losses caused by the customer's default.

Requiring FCMs to disclose the amount, source, and purpose of any unsecured and uncommitted short term funding the FCM has access to would help potential and existing customers gain insight into the FCM's capacity to meet unexpected liquidity needs that might occur due to a fellow customer's default.

Requiring FCMs to disclose the percentage of customer debts the FCM experienced during the past 12-month period, as compared to the balance of funds held for futures customers, Cleared Swaps Customers, and 30.7 Customers would give customers a sense for how effective the firm's risk management program is, as well as a sense for the quality of the customer pool that the FCM has accepted.

Requiring FCMs to provide a summary of their current risk management practices, controls and procedures would give customers insight into the procedures that FCMs use to manage the risks associated with fellow customers, which would be valuable to customers when evaluating potential fellow customer risk at various FCMs.

By requiring each FCM to adopt policies and procedures reasonably designed to ensure that its advertising and solicitation activities are not misleading to its FCM customers, the proposed rules would strengthen accountability for communication related to an FCM's sales and solicitation activities. Moreover, the Commission and DSROs would be better equipped to monitor FCMs' internal controls related to sales and solicitation, and compliance with those controls, if FCMs have established policies and procedures. In this way, the proposed rules would promote consistently reliable communication associated with each FCM's sales and solicitation efforts.

By requiring FCMs to update the disclosure proposed in rule 1.55(i) annually as well as any time there is a ''material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the futures commission merchant,'' and requiring the FCM to provide each updated disclosure to its customers, the rule would make FCMs responsible to communicate with customers whenever such events occur. This requirement would help to ensure that the FCM's financial condition, business operations, or other important factors do not change in material ways without customers being aware of such changes, and would likely prompt some customers to conduct additional due diligence in such situations in order to determine whether their funds are at risk, which would provide additional accountability for FCMs.

By requiring FCMs to provide their daily Segregation Schedules, daily Secured Amount Schedules, and daily Cleared Swaps Segregation Schedules, as well as additional month end and annual financial data, the proposed rules would facilitate transparency. All of the information that firms would be required to post on their Web site is information that would be public based on the requirements of this rule even if it were not posted on each FCM's Web site. However, if the schedules mentioned above were not posted on each FCM's Web site, market participants would have to submit a request to the Commission in order to access that information. Requiring each FCM to post the above schedules and data on its Web site would help to ensure that market participants are aware that it is available, and would also improve the speed and efficiency of obtaining it.

Similarly, by requiring FCMs to provide a link to the Web site of the NFA's Basic System facilitate transparency by promoting awareness of the additional information that is public regarding each FCM's investment of customer funds and by minimizing search costs for obtaining that information.

Costs

FCMs would have to create the Firm Specific Disclosure Document which would likely require time from compliance, legal, accounting, and administrative personnel. The Commission estimates that the cost for producing the content of the initial disclosure would be between $6,000 and $22,200.[149] In addition, each FCM would have to update the disclosure annually as well as any time there is a material change to the business that could affect the customer's willingness to do business with the FCM. Producing the content of each update is likely to be less costly than the initial disclosure, since some parts of the disclosure will likely remain the same from one version to the next. The Commission estimates that such updates would cost between $6,000 and $12,000.[150]

Posting the Firm Specific Disclosure Document and the schedules and data that would be required by § 1.55(o) would require firms to update their Web site on a daily, monthly, and annual basis with the information that would be required under § 1.55(o). The Commission estimates that these

[149] This assumes 40–200 hours from a compliance attorney, 10–50 hours from a senior accountant, 40–60 hours from an office services supervisor, and 5 hours from the CCO. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35 *40 = $3,143.88 and $$85.35 *200 = $17,069.39. The average compensation for a senior accountant is $44.18/hour [$67,971.00 per year/(2000 hours per year)*1.3 is $44.18 per hour]; $44.18*10 = $441.81 and $44.18*50 = $2,209.06. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*40 = $1,606.18 and $40.15*60 = $2,409.26. The average compensation for a chief compliance officer is $110.97/hour [$170,727 per year/(2000 hours per year)*1.3 = $110.97/hour]; $110.97*5 = $554.86. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

[150] This estimate assumes 40–80 hours from a compliance attorney, 20–40 hours from an intermediate accountant, and 30–60 hours from an office services supervisor. The average compensation for a compliance attorney is $85.35/hour [$131,303 per year/(2000 hours per year)*1.3 is $85.35 per hour]; $85.35*40 = $3,413.88 and $85.35*80 = $6,827.768. The average compensation for an intermediate accountant is $34.11/hour [$52,484.00 per year/(2000 hours per year)*1.3 is $34.11 per hour]; $34.11*40 = $1364.58 and $34.11*80 = $2729.17. The average compensation for an office services supervisor is $40.15/hour [$61,776.00 per year/(2000 hours per year)*1.3 is $40.15 per hour]; $40.15*20 = $803.09 and $40.15 *60 = $2,409.26. These figures are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry.

updates would cost between $2,300 and $7,000 per year.[151]

Request for Comment

Question 27: What modifications to the requirements of § 1.55(k)(10) should the Commission consider in order to ensure that the data provided from FCMs' most recent month-end is valuable to customers evaluating potential fellow customer risk?

- In particular, Is there additional information FCMs could provide related to the value of the FCM's proprietary margin requirements and customers' margin requirements that would assist current and potential customers when conducting due diligence on an FCM?
- Is there additional information FCMs could provide that would give customers a more complete picture of its ability to meet unexpected liquidity needs that could occur due to the default of one of its customers?

Question 28: Would the data from an FCM's most recent month-end be more valuable to customers if it were coupled together with similar data or the same data from other points in time? If so, what points in time should the Commission consider?

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swap Customer Collateral

Proposed Changes

As described in the section by section discussion at II.Q, the proposed amendments to § 22.2 would incorporate changes with respect to protection of funds for customers trading cleared swaps that are identical to the changes proposed for protection of futures customer funds. Those changes include: (1) Incorporating the same change to haircutting procedures as was proposed above in § 1.17 and § 1.32 but for swaps; (2) requiring the FCM to send daily Segregation Calculations for cleared swaps to the Commission and DSRO; and (3) requiring that segregated investment detail report that FCMs produce twice per month, listing assets on deposit at each depository, to be sent to CFTC and DSRO electronically by 11:59 p.m. the following business day. Records of both reports would be required to be maintained in accordance with § 1.31.

In addition, the proposed rule would specify that FCMs must maintain residual interest in customer segregated accounts that is larger than the sum of all customer margin deficits. This proposed requirement is substantially identical to the proposed requirement in §§ 1.22 and 30.7.

Benefits

As discussed above with reference to § 1.32, requiring FCMs to submit their daily segregation reports to the Commission and DSRO will enhance protection of customer funds by giving both of them additional information that, together with permission to view depository accounts online at any time, would enable both the Commission and DSRO to monitor those accounts more closely for any discrepancies that may result from operational errors or fraud. Moreover, requiring FCMs to submit their detailed list of depositories to the Commission and DSRO twice per month would give both organizations additional information that could help them perform spot checks to ensure that the FCM is valuing and haircutting securities correctly and, more generally, to verify that the value of each account that is computed by the FCM is accurate.

As described in the discussion of cost and benefit considerations related to § 1.22, by requiring that FCMs maintain residual interest in their cleared swap customer segregated accounts, the proposed rule would ensure that the FCM is not using one customer's funds to purchase, margin, secure, or settle positions for another customer and when combined with the reporting requirements in § 22.2 would provide the Commission and the public with sufficient information to verify that FCMs are not using one customer's funds to purchase, margin, secure or settle positions for another customer.

Costs

With respect to costs, as described above, changes to the reporting requirements codify requirements that are already established by the DSROs. Therefore, the additional requirements will not introduce new costs for market participants. On the other hand, reducing the haircut increases the likelihood that adverse developments affecting the FCM's § 1.25 investments could cause financial strain for the FCM, or could cause losses that the FCM would not be able to cover, either of which could increase risk to customer funds. However, as described above in the cost benefit considerations section related to § 1.17, the Commission proposes that FCMs that are dual registrants will be able to use the SEC's haircutting procedures, and that FCMs that are not dual registrants do not typically invest in securities that would be subject to reduced haircuts under the SEC's proposed rules.

By requiring FCMs to maintain residual interest in the cleared swap customer segregated accounts that is greater than the sum of their customers' margin deficits, the proposed rule would create costs and benefits that are substantially identical to those described in the cost and benefit considerations related to § 1.22. As discussed in that section, the Commission does not have information to determine whether FCMs typically maintain residual interest in their cleared swap customer segregated accounts that is greater than or less than the sum of their customers' margin deficits, and requests information sufficient to make such a determination, and to quantify the associated costs, if any.

Request for Comment

Question 29: The Commission requests comment regarding whether FCMs typically maintain residual interest in their customer segregated accounts that is greater than the sum of their customer margin deficits, and data from which the Commission may quantify the average difference between the amount of residual interest an FCM maintains in customer segregated accounts and the sum of customer margin deficit.

Question 30: How much additional residual interest would FCMs hold in their customer segregated accounts in order to comply with the proposed regulation? What is the opportunity cost to FCMs associated with increasing the amount of capital FCMs place in residual interest, and data that would allow the Commission to replicate and verify the calculated estimates provided.

Question 31: The Commission request information regarding the additional amount of capital that FCMs would likely maintain in their customer segregated accounts, if any, to comply with the proposed regulation. What is the average cost of capital for an FCM? Please provide data and calculations that would allow the Commission to replicate and verify the cost of capital that you estimate?

§ 22.17 Policies and Procedures Governing Disbursements of Cleared Swaps Customer Collateral From Cleared Swap Customer Accounts

Proposed Changes

As described in the section by section discussion at in II.Q, proposed § 22.17 would impose restrictions on an FCM's withdrawal of its residual interest, and

[151] This assumes 10–30 minutes of time per day from a programmer. The average compensation for a programmer is $53.64/hour [$82,518 per year/(2000 hours per year)*1.3 = $53.64/hour]; $53.64*43 = $2,145.47 and $53.64*130 is $6,972.77.

requires that if a withdrawal of residual interest for proprietary use causes the FCM to fall below its targeted residual interest that the funds be replenished the following business day or the residual interest target be lowered in accordance with its policies and procedures established under § 1.11.

Benefits and Costs of the Proposed Changes

The costs and benefits are similar to those created by §§ 1.23 and 1.11 but apply to customer funds in Cleared Swaps Customer Accounts rather than customer segregated accounts, and therefore are in addition to those specified in §§ 1.23 and 1.11.

§ 30.1 Definitions

Proposed Changes

Proposed § 30.1 establishes definitions for ''30.7 Customer,'' ''30.7 Account,'' and ''30.7 Customer Funds.'' The first is defined as any foreign futures or foreign option customer, together with any foreign-domiciled person who trades in foreign futures or foreign options trough an FCM. ''30.7 Account'' and ''30.7 Customer Funds'' are then defined accordingly. These definitions would replace the terms ''foreign futures or foreign options customer,'' ''foreign futures or foreign options customer account,'' and ''foreign futures or foreign options customer funds,'' respectively. The existing term ''foreign futures or foreign options customer'' only includes U.S.-domiciled customers that deposit funds with an FCM for use in trading foreign futures or foreign options. The proposed definitions, on the other hand, would include both U.S. and foreign customers that deposit funds with an FCM for use in trading foreign futures or foreign options.

Benefits and Costs of the Proposed Changes

These definitions play a 'gatekeeping' function with respect to other rules by determining what customers are included as ''30.7 Customers.'' However, the costs and benefits of these changes are attributable to the substantive requirements related to the definitions, and therefore are discussed in the cost benefit considerations related to § 30.7.

§ 30.7 Treatment of Foreign Futures or Foreign Options Secured Amount

Proposed Changes

As described in the section by section discussion at II.R, the proposed amendments would: (1) Incorporate the funds of foreign-domiciled investors deposited with an FCM for investment in foreign futures and foreign options within the protections provided in 30.7; (2) eliminate the Alternative Method and require the Net Equity Liquidation Method for calculating 30.7 customer segregation requirements; (3) add specificity to the written acknowledgments that FCMs and DCOs must obtain from their depositories by providing required templates; [152] (4) add restrictions on withdrawing from residual interest; [153] (5) require that 30.7 Customer Funds deposited in a bank must be available for immediate withdrawal at the request of the FCM; (6) clarify that the FCM is responsible for any losses related to investing 30.7 Customer Funds in investments that comply with § 1.25; (7) add a prohibition against making unsecured loans to customers or using the funds in the customer's trading account as security for the loan; (8) require daily segregation reports and detailed list of depositories be submitted to the Commission and DSRO, and that targeted residual interest be included in both of those reports; (9) allow FCMs that are not dual registrants to use the broker-dealer (''BD'') procedure for assigning a smaller haircut to instruments with low default risk; (10) establish a limit on the amount of funds in a 30.7 Account that can be held outside the United States; [154] and (11) require FCMs to maintain residual interest in 30.7 Accounts that is larger than the sum of all 30.7 Customer margin deficits. This proposed requirement is substantially identical to the proposed requirement in §§ 1.22 and 22.2.

A. Compared to Customer Protections Under §§ 1.20–1.32 and § 22

The result of the proposed changes is that the regulatory requirements established in § 30.7 for the protection of 30.7 Customer Funds would be substantially the same as those established for segregated customer funds under 4(d) and §§ 1.11–1.32, and for cleared swaps customer funds in § 22. However, the 30.7 regime would have distinct requirements with respect to: (1) the definition of the minimum amount that must be deposited in a 30.7 Account for each 30.7 Customer is different than in the corresponding requirements in §§ 1.12 and 22.2.[155] The difference is due to the fact that 30.7 Customers' funds may be deposited overseas under a different regulatory regime. The rule requires that FCMs abide by the highest requirement that is relevant to those funds, whether it is the United States or the foreign regime; (2) the list of acceptable depositories for 30.7 Funds includes banks or trusts outside of the United States with more than $1 billion in regulatory capital, and various other participants of foreign boards of trade and their depositories; and (3) 30.7 limits the amount of funds from a 30.7 Account that can be held outside the United States. Of these three differences, the third is the only one created by the proposed rule, and therefore is the only one incorporated in the cost benefit considerations discussion.

Benefits and Costs of the Proposed Changes

The proposed changes would establish regulations for the protection of customer funds deposited for trading in foreign futures and options that, with limited exceptions, is substantively identical to the protections that exist for futures customer funds and cleared swaps customer funds. Therefore, many of the costs and benefits of the changes that are proposed are identical to those described above in the cost benefit considerations related to §§ 1.11–1.32 and § 22.

1. Incorporating funds of foreign-domiciled investors deposited with an FCM for investment in foreign futures and foreign options within the protections provided in 30.7

[152] The additional specificity incorporates the same requirements for acknowledgment and agreement that are contained in the templates in the appendices of §§ 1.20 and 1.26.

[153] The same requirements as are proposed for futures customers' funds and cleared swaps customers' funds, including a requirement for the FCM to abide by its policies and procedures required in § 1.11.

[154] As a result of the proposed changes, the rules in § 30.7 for the protection of 30.7 Customer Funds would be substantially the same as the rules for the protection of segregated customer funds under 4(d) and §§ 1.11–1.32, and the rules for the protection of cleared swaps customer funds in § 22. However, there are a few proposed changes to § 30.7 that are dissimilar to current or proposed regulations protecting futures customer funds and cleared swap customer funds. They are: (1) the definition of the minimum amount that must be deposited in a 30.7 Account for each 30.7 Customer is different than in the corresponding requirements in 1.20 and 22.2. The difference is due to the fact that 30.7 Customers' funds may be deposited overseas under a different regulatory regime and the proposed rule would require an FCM to comply with the highest requirement that is relevant to those funds, whether it is the U.S. or the foreign regime; (2) the list of acceptable depositories for 30.7 Funds includes banks or trusts outside of the U.S. with more than $1 billion in regulatory capital, and various other participants of foreign boards of trade and their depositories; and (3) 30.7 limits the amount of funds from a 30.7 Account that can be held outside the U.S.

[155] See § 30.7(a).

Benefits

Currently, when an FCM receives funds from foreign customers for use in trading foreign futures and foreign options, the FCM may choose, but is not required, to keep foreign customer funds in a segregated account. If the funds are not kept in a segregated account, they are not subject to the same level of oversight and protection as other customer funds. For example, those funds are not incorporated in the daily or bi-monthly calculations that are submitted to the Commission and DSRO, and the FCM is permitted to use the assets of one foreign customer to cover the obligations of another foreign customer, may allow a net deficiency to exist in the funds of foreign customers held for use in foreign futures or foreign options, and is allowed to commingle such funds with the FCM's proprietary funds and use them as part of its business capital.

The benefit or requiring customer funds to be kept in segregated accounts is that those funds would receive the same protections as funds deposited by U.S.-domiciled investors. This enhances the safety of funds deposited by both U.S. and foreign investors by ensuring that the FCM maintains sufficient funds in segregated accounts to satisfy its obligations regarding all customer funds that have been deposited at the FCM.

The proposed change would extend equivalent oversight and protection to the money, securities and property received by an FCM for or on behalf of a foreign-domiciled customer for foreign futures or foreign options trading. Specifically, FCMs would be required to hold the funds of foreign-domiciled customers in 30.7 secured accounts, to include such funds in daily and bi-monthly calculations of 30.7 requirements and funds set aside for 30.7 customers, and to abide by other policies and procedures regarding handling of customer funds. This is a benefit because FCMs would be required to hold sufficient funds in 30.7 accounts at all times to cover the obligations they have to their foreign-domiciled customers as well as their U.S.-domiciled customers. Various regulations designed to ensure that this requirement is met at all times would also apply, including the § 30.7(g) restrictions on an FCM's withdrawal of its residual interest which is commingled with customer 30.7 funds, and policies and procedures developed by the FCM pursuant to § 1.11 that are designed to ensure safe handling of such funds.

Application of the additional protections designed for customer funds will help to ensure that in the event an FCM has insufficient regulatory capital, all 30.7 Customer Funds are available to be ported to another FCM. This benefit is relevant both to foreign-domiciled customers and to U.S.-domiciled customers holding money at an FCM where foreign-domiciled customers also hold funds because, as described above, in the event of a bankruptcy both groups of customers are entitled to equivalent protections regardless of whether their funds were held apart in separate accounts. Consequently, under the current rules, if an FCM keeps foreign-domiciled customer funds out of 30.7 accounts and then defaults, there may not be sufficient funds to cover the obligations of the FCM to all of their U.S.-domiciled as well as foreign-domiciled customers. If this occurs, all customers would receive a pro-rata share of the funds that were kept in 30.7 accounts, regardless of which customers' funds were kept in the 30.7 account. U.S.-domiciled customers would possibly suffer a pro rata loss of their funds in the event of the FCM's bankruptcy because an FCM may not have included foreign-domiciled customer funds in 30.7 accounts. The proposed rule would prevent this situation from occurring, thus providing increased protection not only to the foreign-domiciled customers that deposited funds, but to the U.S.-domiciled customers as well.

According to FIA, ''FCMs have generally adopted policies and procedures designed to provide protections to all customers trading on foreign boards of trade that are comparable to the protections afforded customers trading on U.S. futures markets.'' [156] If true, the proposed change would not create substantial costs or benefits in periods of normal activity for the FCM. However, under current regulations, FCMs still have the ability to diverge from the aforementioned practices they have generally adopted, and can pull foreign-domiciled customer funds out of 30.7 accounts and use those funds as if they were their own. It is precisely in a time of stress for an FCM that these protections for customer funds are most needed to prevent the FCM from commingling such funds with its own capital and using it to meet the general obligations of the firm. It is not possible to quantify the value of the additional protection that would be provided to non-U.S.-based customers on the basis of the proposed change. To do so would require data sufficient to estimate the probability and expected magnitude of losses due to lesser protections for funds deposited by foreign-domiciled customers, and the Commission does not have such data. The Commission, however, requests public comment regarding these benefits, and specifically requests any data commenters can provide that would assist the Commission in quantifying such benefits.

Costs

With respect to costs the Commission understands that in practice, FCMs have generally adopted practices that provide equivalent protections to funds deposited by customers domiciled in the U.S. and those who are not. Therefore, during normal operations the proposed requirement would not create any additional costs. However, the proposed amendment will prevent an FCM from using foreign-domiciled customer funds for trading foreign futures and foreign options as its own capital, thus reducing the FCM's liquidity which increases risk to the FCM in times of stress. As a consequence, the FCM will have an incentive to keep more capital in order to protect itself since it will no longer be able to use such funds to meet or secure its own obligations. The Commission does not have adequate data to quantify the cost of FCMs' decreased liquidity or the cost of the additional capital they may hold as a result. Doing so would require estimates of probabilities regarding the likelihood of an FCM's liquidity crisis, likelihood they hold foreign-domiciled customer funds for use in foreign futures and foreign options trading, the amount of such funds, the duration of the liquidity crisis, and a number of other factors that the Commission does not have adequate information to estimate.

Request for Comment

Question 32: The Commission requests comment from the public regarding the extent to which FCMs currently provide equivalent protections to U.S.-domiciled and foreign-domiciled customers for trading foreign futures and foreign options, as well as the probability and expected size of losses that foreign-domiciled customers may face due to lesser regulatory protection. In addition, the Commission requests comment about any additional impact this change may have on U.S. domiciled investors, foreign investors, or the public.[157]

[156] FIA ''Initial Recommendations for Customer Funds Protection,'' p. 10.

[157] Questions posed to the public have been numbered for commenters' convenience. The Commission requests that commenters identify the

2. Eliminate the Alternative Method and require the Net Equity Liquidation Method for calculating 30.7 Customer segregation requirements

Benefits

Under the current regulations FCMs are allowed to use the Alternative Method, which only requires the maintenance of sufficient funds in the foreign futures or foreign options account to satisfy the margin required on open positions plus or minus any unrealized gains or losses on such positions, and any funds representing option premiums or funds necessary to margin or guarantee such options.

By removing the Alternative Method, which the Commission understands is not in use, and requiring the Net Liquidating Equity Method, the proposed rules benefit customers by reducing the risk that a shortfall in customer funds could exist where an FCM operates in compliance with Commission regulations. More specifically, by requiring the FCM to segregate in separate accounts sufficient funds to satisfy the full account equities of all of its customers trading foreign futures or foreign options, the FCM would have sufficient funds in segregated accounts to meet all of their obligations to all such customers at any time, including in the event the FCM defaults. Further, in the event of default, the proposed regulations would facilitate the transfer of assets to another FCM by assuring the receiving FCM that there are sufficient funds to cover the liabilities that it may be assuming.

Costs

With respect to costs, as described above, the Commission understands that in practice, all FCMs are currently using the Net Liquidating Equity Method. However, FCMs currently have the option to switch to the Alternative Method, which they would have an incentive to do if the FCM needed additional liquidity. The proposal would prohibit an FCM switching to the Alternative Method, thereby preventing an FCM from using some portion of customer funds as if it were its own operational capital. In doing so, the proposed rule would reduce the FCM's options for obtaining liquidity.

The Commission does not have adequate data to quantify the cost of this change. Doing so would require estimates of probabilities regarding the likelihood of an FCM's liquidity crisis, likelihood they hold foreign-domiciled customer funds for use in foreign futures and foreign options trading, the amount of such funds, the amount that are typically required to margin open positions for 30.7 Customers, and a number of other factors that the Commission does not have adequate information to estimate. However, as above, the Commission notes that it does not believe that FCMs should consider any customer funds a source of liquidity.

3. Specific requirements contained in the written acknowledgments that FCMs and DCOs must obtain from their depositories

The costs and benefits resulting from this change are similar to those discussed the cost benefit considerations sections related to §§ 1.20 and 1.26, but affect 30.7 Customer funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in the cost benefit considerations sections related to § 1.20 and § 1.26.

4. Restrictions on withdrawing from residual interest, including a requirement for the FCM to abide by its policies and procedures required in § 1.11

The costs and benefits resulting from this change are similar to those discussed the cost benefit sections related to §§ 1.23 and 1.11, but affect 30.7 Customer funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in cost benefit considerations sections related to §§ 1.23 and 1.11.

5. Require that 30.7 Customer Funds deposited in a bank must be available for immediate withdrawal at the request of the FCM

The costs and benefits resulting from this change are similar to those discussed cost benefit considerations sections related to §§ 1.20, but affect 30.7 Customer Funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in the cost benefit considerations section related to § 1.20.

6. Clarification that the FCM is responsible for any losses related to investing 30.7 Customer Funds in investments that comply with § 1.25

The costs and benefits resulting from this change are similar to those discussed in the cost benefit considerations section related to § 1.29, but affect 30.7 Customer Funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in the cost benefit considerations sections related to §§ 1.20 and 1.29.

7. Prohibition against making unsecured loans to customers and against using the funds in the customer's trading account as security for the loan

The costs and benefits resulting from this change are similar to those discussed the cost benefit considerations section related to § 1.30, but affect 30.7 Customer funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in that section.

8. Require daily segregation reports and segregated investment detail reports be submitted to the Commission and DSRO, and that targeted residual interest be included in those reports

The costs and benefits resulting from this change are similar to those discussed the cost benefit considerations sections related to § 1.32, but affect 30.7 Customer funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in that section.

9. Allow FCMs that are not dual registrants to abide by the BD procedure for assigning a smaller haircut to investments purchased with customer funds that have low default risk

The costs and benefits resulting from this change are similar to those discussed in the cost benefit sections related to §§ 1.32 and 22.2, but affect 30.7 Customer funds rather than futures customer funds, and therefore are in addition to the costs and benefits discussed in those sections.

Question

Question 33: However, the Commission requests comment regarding the extent to which 30.7 Customer funds held outside the United States may be invested in instruments that are subject to reduced haircuts under the proposed SEC rules, and the effect that will have on the capital requirements of U.S. domiciled FCMs.

10. Proposed § 30.7(c) limits the amount of funds from a 30.7 Account that can be held outside the U.S.

Funds held overseas are subject to different regulatory and bankruptcy regimes that may not offer comparable protections for customer funds, creating additional repatriation risks to those funds. For example, if an FCM carrying 30.7 funds, some of which were held in depositories outside the U.S., were to default, it is possible that the Trustee would not be able to recover sufficient funds to repay all the FCM's obligations to 30.7 Customers. As noted above, this is especially true if the funds are deposited with an overseas affiliate of the FCM, as the likelihood of coincident bankruptcies of affiliated financial firms

number of the question they are addressing when responding to specific questions posed by the Commission.

is exceedingly high. In such an event, the funds held at the affiliate would be distributed in accordance with the insolvency rules of the foreign jurisdiction. In such a case each 30.7 Customer would likely receive a pro-rata share of the funds that the Trustee is able recover, when the Trustee is able to recover them. The proposed limit on amount of funds that can be held outside the U.S. would ensure that as much of the customers' funds as possible remain subject to the U.S. regulatory and bankruptcy regimes, eliminating repatriation risk to those funds. By eliminating this risk for a larger percentage of the 30.7 funds, the proposed rule promotes higher recovery rates for 30.7 account funds if the FCM defaults, which helps ensure that 30.7 Customers receive the largest pro rata distribution possible.

Regarding costs, the proposed change effectively prohibits FCMs from increasing the amount of 30.7 Customer Funds they hold overseas. This restriction may reduce the return that FCMs may be able to achieve through their investment of customer funds.

11. As described in the discussion of cost and benefit considerations related to § 1.22, by requiring that FCMs maintain residual interest in segregated accounts, the proposed rule would ensure that the FCM is not using one customer's funds to purchase, margin, secure, or settle positions for another customer and when combined with the reporting requirements in § 30.7 would provide the Commission and the public with sufficient information to verify that FCMs are not using one customer's funds to purchase, margin, secure or settle positions for another customer.

Regarding costs, by requiring FCMs to maintain residual interest in their 30.7 Accounts that is greater than the sum of their 30.7 Customers' margin deficits, the proposed rule would create costs and benefits that are substantially identical to those described in the cost and benefit considerations related to § 1.22. As discussed in that section, the Commission does not have information to determine whether FCMs typically maintain residual interest in their 30.7 Accounts that is greater than or less than the sum of their 30.7 Customers' margin deficits, and requests information sufficient to make such a determination, and to quantify the associated costs, if any.

Additional Requests for Comment Related to the Commission's Proposed Consideration of Costs and Benefits

Question 34: The Commission requests comment on all aspects of its proposed consideration of the costs and benefits of the rulemaking. More specifically, the Commission requests dollar estimates of the costs and the value of the benefits of the proposed rules described herein, including supporting data. In addition, the Commission requests comment on whether there are additional costs or benefits related to the proposed rules that the Commission should consider, as well as whether there are alternative approaches that would be more effective in light of the purpose of the proposal. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed rule.

Question 35: The Commission requests comment regarding the different ways in which the proposed rules will impact FCMs that are different sizes and that are operating with different business models. In particular, are there any specific proposed requirements that would be particularly costly for either small or large FCMs to follow? Are there any specific proposed requirements that would be especially costly for FCMs with a particular business model to follow? If so, please explain and where possible please quantify specific costs.

Question 36: The Commission requests comment regarding the effects of the proposed amendments on the composition of the FCM industry including bank subsidiaries versus stand-alone FCMs, large versus small, retail customer oriented versus wholesale, possible consolidation, etc. Please explain and provide supporting data.

Question 37: The Commission also requests comment regarding the potential impact of the proposed regulations on specific groups of customers. Will the proposed rules make it more difficult for certain groups of customers to obtain FCM services?

IV. Administrative Compliance

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [158] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[159] The proposed regulations would affect FCMs and DCOs. The Commission previously has determined that FCMs are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to FCMs.[160] The Commission's determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[161] The Commission also has previously determined that DCOs are not small entities for the purpose of the RFA.[162] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

The Commission invites comments on the impact of this proposed regulation on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') provides that a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). This proposed rulemaking contains several collections of information that have not been approved previously by OMB. The collections contained in this rulemaking are proposed to be mandatory.

To avoid double accounting for the PRA burden hours of collections that already have been assigned control numbers by OMB, or for burden hours contained in pending collections of information—in particular existing collection 3038–0024 and proposed revisions thereto, and existing collections 3038–0052 and 3038–0091—this PRA analysis contains only burden estimates for collections of information that have not previously been submitted to OMB. The Commission seeks comment on those collections of information contained in this rulemaking that would increase the burden hours contained in each of the related currently valid or proposed collections.

In particular, the Commission will submit to OMB information collection requests (''ICR'') that address the new collection burdens that would result from the finalization of these proposed rules on or before the publication of the proposed rules, as required by 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.11. All interested parties may submit comments

[158] 5 U.S.C. 601 et seq.

[159] 47 FR 18618 (Apr. 30, 1982).

[160] Id. at 18619.

[161] Id.

[162] See 66 FR 45605, 45609, Aug. 29, 2001.

on this analysis and the associated ICR to the Commission and to OMB, as provided below.

The Commission will protect proprietary information according to the Freedom of Information Act (''FOIA'') and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.

1. Collections of Information

The proposed amendments would require FCMs to adopt new policies and procedures, keep records related to such policies and procedures and submit reports of such policies and procedures, including certain management approvals, to the Commission. In addition, the proposals alter existing FCM reporting requirements in process and substance, including changes to certain schedules and proposed schedules to the Form 1–FR–FCM (the Segregation Schedule and Secured Amount Schedule); changes to the process for filing such schedules and additional frequency for such filings; and requiring detailed information supporting such schedules to also be reported to the Commission and the FCM's designated self-regulatory organization.

Further FCMs and depositories accepting customer funds will be required to obtain acknowledgment letters in specified formats and file them directly with the Commission and the FCM's designated self-regulatory organization. Records will have to be kept of approvals of certain withdrawals made of an FCM's residual interest in customer funds and further reported to the Commission. Additional notices will also be required to be filed with the Commission under the proposed amendments. The examination process of SROs and DSROs is proposed to be amended with new recordkeeping and reporting requirements being imposed, as well as a required report to be obtained from an examinations expert and filed with the Commission. Lastly, disclosures made by FCMs to customers will be enhanced and records of such disclosures will have to be maintained and reported to the Commission.

As noted, some of these proposed amendments will result in the alteration of existing regulations covered by existing collections which have already been assigned OMB control numbers. Others will result in additional or new collection burdens, which will be incorporated into the most relevant existing collection maintained by the Commission and previously approved by or submitted for approval to OMB.

a. Proposed Revision to Collection 3038–0024

Collection 3038–0024 is currently in force, with its control number having been provided by OMB. In addition, the collection was proposed to be revised in May 2011, with the approval of and issuance of a control number by OMB presently pending. Certain collections contained in this rulemaking would result in further revisions to the collection, as discussed herein.

First, the Segregation Schedules and the Secured Amount Schedule, required to be filed under § 1.10, have been proposed to be changed to reflect the FCM's target for residual amounts and the sum of margin deficits. The proposed amendments will also increase the frequency of filing these schedules to daily under §§ 1.32 and 30.7. However, daily computations were previously required with respect to the subject matter of these schedules and monthly filing procedure for these schedules is already in place, and these schedules are already subject to an OMB control number. Thus, the revision of collection 3038–0024 requires only incremental change to capture the new elements of § 1.10. One time initial system changes, if any, that will need to be made to effect daily filing of the detail previously required in the monthly report is anticipated to require between 40 and 80 burden hours for the approximately 72 firms required to comply with the new provisions of § 1.10, depending on the size of the firm the complexity of their systems. The additional filing requirement, which may be effected electronically by the approximately 72 firms that will be required to make daily filings, is anticipated to increase the burdens associated with § 1.10 by an anticipated 10–20 minutes for each of the approximately 20 days per month that such reports were not previously required to be filed.

Additionally, the proposed amendments include new requirements for FCMs to establish comprehensive risk management programs under new § 1.11, and maintain associated recordkeeping as well as furnish reports related to such risk management programs to the Commission and the FCM's DSRO. Included within the risk management programs will be specific requirements for FCMs to establish and maintain written policies and procedures regarding the safeguarding of all customer funds.

Collection burdens associated with the safeguarding of customer funds under the Commission's regulations prior to the proposed amendments are already subject to OMB control numbers. Accordingly, the proposed revisions to collection 3038–0024 require only incremental change to capture the new elements of § 1.11. The estimated burden associated with § 1.11 will be divided into two components, a onetime cost to establish the written policies and procedures and an annual burden to maintain the such policies and procedures. Currently there are 72 respondents subject to this change, many of which are expected simply to establish and maintain policies and procedures around their existing risk management programs. The estimated number of hours to create the initial set of policies and procedures by consolidation of existing risk management practices is anticipated to average 75 hours across the 72 respondents that will be obligated to comply. The estimated total annual maintenance burden on each respondent is anticipated increase by an average 25 hours annually across the 72 recordkeepers.

The collection is further being revised to reflect additional proposed requirements for notifications under § 1.12, and the additional required filings contained in the proposed amendments under §§ 1.20, 1.23, 1.32, and 30.7. Currently there are 72 respondents estimated to be subject to these changes. The total of all proposed changes to the Schedules of the Form 1–FR, which is already subject to an OMB control number, is anticipated to be incremental, and it is estimated that the proposed changes will add 15 minutes to the preparation and filing of each report.

The proposed revision to § 1.12(i) will require FCMs to report to the Commission if the FCM discovers or is informed that it has invested funds held for futures customers in instruments that are not permitted investments under § 1.25. This new report will be done on an as required basis. It is estimated that this report will be completed by two respondents per year with a burden of one hour for each report.

The proposed revision to § 1.12(j) will require FCMs to immediately report to the Commission if a withdrawal of funds from accounts holding futures customers funds causes the amount on

deposit in such accounts to be less than the FCM's targeted excess or residual interest in such accounts, or if the residual interest is less than the sum of all margin deficits. The accounting needed to make these reports is already conducted under the Commission's regulations for the purpose of ensuring compliance with the Commission's existing customer protection regulations. Once an event requiring notice is identified, it is anticipated that five respondents per year will be obligated to provide notices to the Commission under § 1.12(j), with an additional burden of up to two hours for each notice.

The Commission is also proposing to amend paragraphs (k) and (l) of § 1.12 which will require an FCM to provide notice to the Commission in the event of a material change in the financial condition of the firm or the firm's operations. These new reports each will be prepared and submitted on an as required basis, and are similar to other notices required to be filed by FCMs in Parts 1 and 190, for example, of the Commission's regulations. Moreover, FCMs are already subject to significant regulations in Part 1 that require each FCM to continuously monitor their financial condition and report shortfalls in net capital. It is estimated that the notices that would be required under paragraphs (k) and (l) of § 1.12 will be made by five respondents per year with a burden of up to three hours for each notice.

FCMs will be required under § 1.20 to obtain and submit to the Commission written acknowledgments, in a form and format being proposed and expected to be required by the Commission, from any depository institution, including certain DCOs, at which futures customer funds will be segregated. It is estimated that the execution and filing of new acknowledgment letters will be completed by five respondents per year with a burden of up to two hours for completion and filing. It is estimated that the maintaining of acknowledgment letters prescribed by the Commission will be conducted by as many as 40 depository institutions annually with an estimated burden of 45 minutes per respondent.

FCMs are currently required to obtain and maintain in its files an acknowledgment letter from depositories for each account holding customer funds, in the form specified by the Commission. The obtaining and maintaining of the acknowledgement letters will be done on an as required basis and are already subject to an OMB control number. Proposed revisions to § 1.20(d) additionally would require FCMs to retain and file these acknowledgment letters electronically with the Commission. This new retention and filing will be done on an as required basis. It is estimated that the filing of an estimated 1 to 2 new acknowledgment letters will be conducted by 72 respondents per year, with a burden of 30 minutes associated with the retention and filing of each of these acknowledgments.

Finally with respect to § 1.20, a derivatives clearing organization may adopt and submit to the Commission rules providing for the segregation of customer funds that may be carried by the DCO that would substitute for the acknowledgment letters completed by other depositories. It is anticipated that approximately 17 of the DCOs registered with the Commission will adopt and submit such rules, with an estimated burden of 45 hours for the adoption and submission of such rules. The DCO also must obtain acknowledgment letters from any depository institution at which the DCO places segregated funds, and these depository institutions must provide the Commission with direct access to the customer account information at all times. It is anticipated that as many as 40 depository institutions may complete such letters, and provide ongoing access to the Commission, with a one-time burden of 45 minutes per respondent for the completion of such letters, and an estimated annual burden of 60 hours associated with providing account access to the Commission.

Similarly, § 30.7(d) is being revised to require FCMs that maintain 30.7 Customer Accounts to obtain and maintain in its files, an acknowledgment letter from depositories for each account holding 30.7 Customer Funds, in the form specified by the Commission, and § 1.26 provides for the same from any institution segregating customer funds in a money market mutual fund account. The proposed revisions to these regulations require FCMs to file such acknowledgment letters electronically with the Commission. The obtaining and maintaining of the acknowledgement letters will be done on an as required basis. It is estimated that the maintaining of acknowledgment letters will be completed by 56 respondents with a burden of 45 minutes per respondent. The completion of the acknowledgment letters by the depositories, estimated at approximately 90 institutions, is expected to be 45 minutes per letter. Additionally, the requirement that these acknowledgement letters be electronically filed with the Commission is anticipated to result in 6 minutes of burden to 56 respondents per year with respect to the proposed revisions to § 30.7 and the same for the proposed revisions to § 1.26.

The Commission is also proposing to amend § 1.23(c) to require an FCM to immediately file written notice with the Commission if the firm withdraws more than 25 percent of its residual interest in segregated accounts. This new filing will be done on an as required basis. It is estimated that the filing of these notices will be completed by ten respondents per year with a burden of one hour for each filing.

Pursuant to the proposed revisions of §§ 1.32(c) and (d), the Segregation Statement shall be completed on a daily basis and filed by noon the following business day. Although the rule proposed herein now require daily filing of the Segregation Statement, it should be noted that the Segregation Statement is statement is already required to be prepared and retained on a daily basis, thus the additional time electronically filing the statement on a daily basis is minimal. Currently there are 72 respondents subject to this change. The estimated total annual burden on each respondent is 2 hours.

Pursuant to the proposed revisions of § 1.32(g) each FCM that holds customer funds is required to file the segregated investment detail report twice monthly. Although the rule proposed herein requires twice monthly filing of the segregated investment detail report, it should be noted that the segregated investment detail report is already required to be prepared twice monthly by the FCM's designated self-regulatory organization. Thus the additional time to electronically file the statement with the Commission is minimal. Currently there are 72 respondents subject to this change. The estimated total annual burden on each respondent is 5 minutes per report.

Similar to the proposed revisions of § 1.32 discussed above, § 30.7(m) requires that the Statement of Secured Amounts shall be completed on a daily basis and filed electronically by noon the following business day. Although the rule proposed herein now require daily filing of the Secured Amounts Statement, it should be noted that the Secured Amounts is statement is already required to be prepared and retained on a daily basis, thus the additional time electronically filing the statement on a daily basis is minimal. Currently there are 56 respondents subject to this change. The estimated total annual burden on each respondent is 2 hours.

Revisions to § 30.7(i) will also require that FCMs keep records of customer funds including a daily valuation of each instrument and supporting documentation of such daily valuation. Currently there are 56 respondents subject to this change. The estimated total annual burden on each respondent is 100 hours.

Finally, § 1.55 would require public disclosures to be made by an FCM to its customers respecting the limitations applicable to and risks associated with the segregation of funds, among other things. It is anticipated that 72 FCMs will provide such notices through the standardization of account opening documents or distribution of the notices therewith. Each FCM is expected to expend up to 4–20 hours incorporating the notice, which is prescribed by regulation, into its account opening process for customers that will establish new accounts, and up to 10 minutes per customer providing the notices on a one-time basis to as many as 3,000 customers and accounts opened by existing customers.

b. Proposed Revision to Collection 3038–0052

The above-referenced collection titled ''Part 38—Designated Contract Markets'' includes all burden associated with § 1.52, ''Self-regulatory organization adoption and surveillance of minimum financial requirements''. The proposed amendments include additional requirements for SROs to adopt for their examination procedures, including the requirement to have examination programs reviewed by an examinations expert and having the report of such examinations expert filed with the Commission at least once every two years. Regulation 1.52 already contains significant requirements with respect to the examination programs to be established and maintained by SROs, which are subject already to an OMB control number. The increase in the burden under this collection for the adoption of enhanced examination procedures, including the recordkeeping and reporting, to the extent such may be necessary by any SRO to which § 1.52 is necessary, is estimated to add up to 50 burden hours to as many as 15 DCMs.

c. Proposed Revision to Collection 3038–0091

Collection 3038–0091was established with the adoption of Part 22 of the Commissions regulations concerning Cleared Swaps in .February 2012 The proposed amendments would require revisions to this collection with respect to recordkeeping and reporting associated with additional filings of the Cleared Swaps Segregation Schedule daily under § 22.2(g), and the associated recordkeeping and reporting with respect to notices of withdrawals under a newly proposed § 22.17. The collection burden associated with the proposed amendments is anticipated to increase by 10 minutes per day and is anticipated to affect 100 entities.

2. Information Collection Comments

The Commission invites the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission will consider public comments on such proposed requirements in:

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the estimated burden of the proposed information collection requirements, including the degree to which the methodology and the assumptions that the Commission employed were valid;
- Enhancing the quality, utility, and clarity of the information proposed to be collected; and
- Minimizing the burden of the proposed information collection requirements on FCMs, SDs, and MSPs, including through the use of appropriate automated, electronic, mechanical, or other technological information collection techniques, e.g., permitting electronic submission of responses.

Copies of the submission from the Commission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160 or from *http://RegInfo.gov.* Organizations and individuals desiring to submit comments on the proposed information collection requirements should send those comments to the OMB Office of Information and Regulatory Affairs at:

- The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Trading Commission;
- (202) 395–6566 (fax); or
- *OIRAsubmissions@omb.eop.gov* (email).

Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rulemaking. Please refer to the **ADDRESSES** section of this rulemaking for instructions on submitting comments to the Commission. OMB is required to make a decision concerning the proposed information collection requirements between thirty (30) and sixty (60) days after publication of the NPRM in the **Federal Register**. Therefore, a comment to OMB is best assured of receiving full consideration if OMB (as well as the Commission) receives it within thirty (30) days of publication of this NPRM. The time frame for commenting on the PRA does not affect the deadline established by the Commission on the proposed rules, provided in the **DATES** section of this rulemaking.

V. Text of Proposed Rules

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 3

Associated persons, Brokers, Commodity futures, Customer protection, Major swap participants, Registration, Swap dealers.

17 CFR Part 22

Brokers, Clearing, Consumer protection, Reporting and recordkeeping requirements, Swaps.

17 CFR Part 30

Commodity futures, Consumer protection, Currency, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing and pursuant to the authority contained in the Act, as indicated herein, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to be read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a, 7b, 8, 9, 10a 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Amend § 1.3 by revising paragraph (rr) to read as follows:

§ 1.3 Definitions.

* * * * *

(rr) *Foreign futures or foreign options secured amount.* This term means all money, securities and property received by a futures commission merchant from, for, or on behalf of 30.7 Customers as defined in § 30.1 of this chapter:

(1) To margin, guarantee, or secure foreign futures contracts and all money accruing to such 30.7 Customers as the result of such contracts;

(2) In connection with foreign options transactions representing premiums payable or premiums received, or to guarantee or secure performance on such transactions; and

(3) All money accruing to such 30.7 Customers as the result of trading in foreign futures contracts or foreign options.

* * * * *

3. Amend § 1.10 by:

a. Revising paragraph (b)(1)(ii);

b. Adding paragraph (b)(5); and

c. Revising paragraphs (c)(1), (c)(2)(i), (d)(1)(v), (d)(2)(iv), (d)(2)(vi), and (g)(2)(ii).

The revisions and addition read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(1) * * *

(ii) In addition to the monthly financial reports required by paragraph (b)(1)(i) of this section, each person registered as a futures commission merchant must file a Form 1–FR–FCM as of the close of its fiscal year, which must be certified by an independent public accountant in accordance with § 1.16, and must be filed no later than 60 days after the close of the futures commission merchant's fiscal year: *Provided, however,* that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under § 240.17a–5(d)(5) of this title.

* * * * *

(5) Each futures commission merchant must file with the Commission the measure of the future commission merchant's leverage (*i.e.,* total balance sheet assets, less any instruments guaranteed by the U.S. Government and held as an asset or to collateralize an asset (*e.g.,* a reverse repo) divided by total capital (the sum of stockholders' equity and subordinated debt) all computed in accordance with U.S. generally accepted accounting principles as of the close of business each month. The filing is required to be made to the Commission within 17 business days of the close of the futures commission merchant's month end.

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the Regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located (as set forth in § 140.02 of this chapter) and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) All filings or other notices prepared by a futures commission merchant pursuant to this section must be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant must be filed electronically.

* * * * *

(d) * * *

(1) * * *

(v) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for 30.7 Customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of this chapter, and the statement of cleared swaps customer segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act as of the date for which the report is made; and

* * * * *

(2) * * *

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the statement of secured amounts and funds held in separate accounts for 30.7 Customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of the chapter, and the statement of cleared swaps customers segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act as of the date for which the report is made;

* * * * *

(vi) A reconciliation, including appropriate explanations, of the statement of the computation of the minimum capital requirements pursuant to § 1.17 of this part and, for a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, the statement of secured amounts and funds held in separate accounts for 30.7 Customers (as defined in § 30.1 of this chapter) in accordance with § 30.7 of this chapter, and the statement of cleared swaps customer segregation requirements and funds in cleared swaps customer accounts under section 4d(f) of the Act, in the certified Form 1–FR with the applicant's or registrant's corresponding uncertified most recent Form 1–FR filing when material differences exist or, if no material differences exist, a statement so indicating; and

* * * * *

(g) * * *

(2) * * *

(ii) The following statements and footnote disclosures thereof: the Statement of Financial Condition in the certified annual financial reports of futures commission merchants and introducing brokers; the Statements (to be filed by a futures commission merchant only) of Segregation Requirements and Funds in Segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, the Statement (to be filed by a futures commission merchant only) of Secured Amounts and Funds held in Separate Accounts for 30.7 Customers (as defined in § 30.1of this chapter) in accordance with § 30.7 of this chapter, and the Statement (to be filed by futures

commission merchants only) of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the Act.

* * * * *

4. Add § 1.11 to read as follows:

§ 1.11 Risk Management Program for Futures Commission Merchants.

(a) *Applicability.* Nothing in this section shall apply to a futures commission merchant that does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result from soliciting or accepting orders for the purchase or sale of any commodity interest.

(b) *Definitions.* For purposes of this section:

(1) ''*Business Unit''* means any department, division, group, or personnel of a futures commission merchant or any of its affiliates, whether or not identified as such that:

(i) Engages in soliciting or in accepting orders for the purchase or sale of any commodity interest and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

(ii) Otherwise handles Segregated Funds, including managing, investing, and overseeing the custody of Segregated Funds, or any documentation in connection therewith, other than for risk management purposes; and

(iii) Any personnel exercising direct supervisory authority of the performance of the activities described in paragraph (b)(1)(i) or (ii) of this section.

(2) ''*Customer''* means a futures customer as defined at § 1.3 of this part, Cleared Swaps Customer as defined at § 22.1 of this chapter, and 30.7 Customer as defined at § 30.1 of this chapter.

(3) ''*Governing Body''* means the proprietor, if the futures commission merchant is a sole proprietorship; a general partner, if the futures commission merchant is a partnership; the board of directors if the futures commission merchant is a corporation; the chief executive officer, the chief financial officer, the manager, the managing member, or those members vested with the management authority if the futures commission merchant is a limited liability company or limited liability partnership.

(4) ''*Segregated Funds''* means money, securities, or other property held by a futures commission merchant in separate accounts pursuant to § 1.20 of this part for futures customers, pursuant to § 22.2 of this chapter for Cleared Swaps Customers, and pursuant to § 30.7 of this chapter for § 30.7 Customers; and

(5) ''*Senior Management''* means, any officer or officers specifically granted the authority and responsibility to fulfill the requirements of senior management by the Governing Body.

(c) *Risk Management Program.* (1) Each futures commission merchant shall establish, maintain, and enforce a system of risk management policies and procedures designed to monitor and manage the risks associated with the activities of the futures commission merchant as such. For purposes of this section, such policies and procedures shall be referred to collectively as a ''Risk Management Program.''

(2) Each futures commission merchant shall maintain written policies and procedures that describe the Risk Management Program of the futures commission merchant.

(3) The Risk Management Program and the written risk management policies and procedures, and any material changes thereto, shall be approved in writing by the Governing Body of the futures commission merchant.

(4) Each futures commission merchant shall furnish a copy of its written risk management policies and procedures to the Commission and its designated self-regulatory organization upon application for registration and thereafter upon request.

(d) *Risk management unit.* As part of the Risk Management Program, each futures commission merchant shall establish and maintain a risk management unit with sufficient authority; qualified personnel; and financial, operational, and other resources to carry out the risk management program established pursuant to this section. The risk management unit shall report directly to Senior Management and shall be independent from the Business Unit.

(e) *Elements of the Risk Management Program.* The Risk Management Program of each futures commission merchant shall include, at a minimum, the following elements:

(1) *Identification of risks and risk tolerance limits.* (i) The Risk Management Program shall take into account market, credit, liquidity, foreign currency, legal, operational, settlement, segregation, technological, capital, and any other applicable risks together with a description of the risk tolerance limits set by the futures commission merchant and the underlying methodology in the written policies and procedures. The risk tolerance limits shall be reviewed and approved quarterly by Senior Management and annually by the Governing Body. Exceptions to risk tolerance limits shall be subject to written policies and procedures.

(ii) The Risk Management Program shall take into account risks posed by affiliates, all lines of business of the futures commission merchant, and all other trading activity engaged in by the futures commission merchant. The Risk Management Program shall be integrated into risk management at the consolidated entity level.

(iii) The Risk Management Program shall include policies and procedures for detecting breaches of risk tolerance limits set by the futures commission merchant, and alerting supervisors within the risk management unit and Senior Management, as appropriate.

(2) *Periodic Risk Exposure Reports.* (i) The risk management unit of each futures commission merchant shall provide to Senior Management and to its Governing Body quarterly written reports setting forth all applicable risk exposures of the futures commission merchant; any recommended or completed changes to the Risk Management Program; the recommended time frame for implementing recommended changes; and the status of any incomplete implementation of previously recommended changes to the Risk Management Program. For purposes of this section, such reports shall be referred to as ''Risk Exposure Reports.'' The Risk Exposure Reports also shall be provided to the Senior Management and the Governing Body immediately upon detection of any material change in the risk exposure of the futures commission merchant.

(ii) *Furnishing to the Commission.* Each futures commission merchant shall furnish copies of its Risk Exposure Reports to the Commission within five (5) business days of providing such reports to its Senior Management.

(3) *Specific risk management considerations.* The Risk Management Program of each futures commission merchant shall include, but not be limited to, policies and procedures necessary to monitor and manage the following risks:

(i) *Segregation Risk.* The written policies and procedures shall be reasonably designed to ensure that Segregated Funds are separately accounted for and segregated or secured as belonging to Customers as required

by the Act and Commission regulations and must, at a minimum, include or address the following:

(A) A process for the evaluation of depositories of Segregated Funds, including, at a minimum, documented criteria that any depository that will hold Segregated Funds, including an entity affiliated with the futures commission merchant, must meet, including criteria addressing the depository's capitalization, creditworthiness, operational reliability, and access to liquidity. The criteria should further consider the extent to which Segregated Funds are concentrated with any depository or group of depositories. The criteria also should include the availability of deposit insurance and the extent of the regulation and supervision of the depository;

(B) A program to monitor an approved depository on an ongoing basis to assess its continued satisfaction of the futures commission merchant's established criteria, including a thorough due diligence review of each depository at least annually;

(C) An account opening process for depositories, including documented authorization requirements, procedures that ensure that Segregated Funds are not deposited with a depository prior to the futures commission merchant receiving the acknowledgment letter required from such depository pursuant to § 1.20 of this part, and §§ 22.2 and 30.7 of this chapter, and procedures that ensure that such account is properly titled to reflect that it is holding Segregated Funds pursuant to the Act and Commission regulations;

(D) A process for establishing a targeted amount of residual interest that the futures commission merchant seeks to maintain as its residual interest in the Segregated Funds accounts and such process must be designed to reasonably ensure that the futures commission merchant maintains the targeted residual amounts and remains in compliance with the Segregated Funds requirements at all times. The policies and procedures must require that Senior Management, in establishing the total amount of the targeted residual interest in the Segregated Funds accounts, perform appropriate due diligence and consider various factors, as applicable, relating to the nature of the futures commission merchant's business including, but not limited to, the composition of the futures commission merchant's Customer base, the general creditworthiness of the Customer base, the general trading activity of the Customers, the types of markets and products traded by the Customers, the proprietary trading of the futures commission merchant, the general volatility and liquidity of the markets and products traded by Customers, the futures commission merchant's own liquidity and capital needs, and the historical trends in Customer Segregated Fund balances, including margin debit and net deficit balances in Customers' accounts. The analysis and calculation of the targeted amount of the future commission merchant's residual interest must be described in writing with the specificity necessary to allow the Commission and the futures commission merchant's designated self-regulatory organization to duplicate the analysis and calculation and test the assumptions made by the futures commission merchant. The adequacy of the targeted residual interest and the process for establishing the targeted residual interest must be reassessed periodically by Senior Management and revised as necessary;

(E) A process for the withdrawal of cash, securities, or other property from accounts holding Segregated Funds, where the withdrawal is not for the purpose of payments to or on behalf of the futures commission merchant's Customers. Such policies and procedures must satisfy the requirements of § 1.23 of this part, § 22.17 of this chapter, or § 30.7 of this chapter, as applicable;

(F) A process for assessing the appropriateness of specific investments of Segregated Funds in permitted investments in accordance with § 1.25 of this part. Such policies and procedures must take into consideration the market, credit, counterparty, operational, and liquidity risks associated with such investments, and assess whether such investments comply with the requirements in § 1.25 of this part including that the futures commission merchant manage the permitted investments consistent with the objectives of preserving principal and maintaining liquidity;

(H) Procedures requiring the appropriate separation of duties among individuals responsible for compliance with the Act and Commission regulations relating to the protection and financial reporting of Segregated Funds, including the separation of duties among personnel that are responsible for advising customers on trading activities, approving or overseeing cash receipts and disbursements (including investment operations), and recording and reporting financial transactions. The policies and procedures must require that any movement of funds to affiliated companies and parties are properly approved and documented;

(I) A process for the timely recording of all transactions, including transactions impacting Customers' accounts, in the firm's books of record;

(J) A program for conducting annual training of all finance, treasury, operations, regulatory, compliance, settlement, and other relevant officers and employees regarding the segregation requirements for Segregated Funds required by the Act and regulations, the requirements for notices under § 1.12 of this part, procedures for reporting of suspected breaches of the policies and procedures required by this section to the chief compliance officer, without fear of retaliation, and the consequences of failing to comply with the segregation requirements of the Act and regulations; and

(K) Policies and procedures for assessing the liquidity, marketability and mark-to-market valuation of all securities or other non-cash assets held as Segregated Funds, including permitted investments under § 1.25 of this part, to ensure that all non-cash assets held in the Customer segregated accounts, both customer-owned securities and investments in accordance with § 1.25 of this part, are readily marketable and highly liquid. Such policies and procedures must require daily measurement of liquidity needs with respect to Customers; assessment of procedures to liquidate all non-cash collateral in a timely manner and without significant effect on price; and application of appropriate collateral haircuts that accurately reflect market and credit risk.

(ii) *Operational Risk.* The Risk Management Program shall include automated financial risk management controls reasonably designed to prevent the placing of erroneous orders, including those that exceed pre-set capital, credit, or volume thresholds. The Risk Management Program shall ensure that the use of automated trading programs is subject to policies and procedures governing the use, supervision, maintenance, testing, and inspection of such programs.

(iii) *Capital Risk.* The written policies and procedures shall be reasonably designed to ensure that the futures commission merchant has sufficient capital to be in compliance with the Act and the regulations, and sufficient capital and liquidity to meet the reasonably foreseeable needs of the futures commission merchant.

(4) *Supervision of the Risk Management Program.* The Risk Management Program shall include a supervisory system that is reasonably

designed to ensure that the policies and procedures required by this section are diligently followed.

(f) *Review and testing.* (1) The Risk Management Program of each futures commission merchant shall be reviewed and tested on at least an annual basis, or upon any material change in the business of the futures commission merchant that is reasonably likely to alter the risk profile of the futures commission merchant.

(2) The annual reviews of the Risk Management Program shall include an analysis of adherence to, and the effectiveness of, the risk management policies and procedures, and any recommendations for modifications to the Risk Management Program. The annual testing shall be performed by qualified internal audit staff that are independent of the Business Unit or by a qualified third party audit service reporting to staff that are independent of the Business Unit. The results of the annual review of the Risk Management Program shall be promptly reported to and reviewed by the chief compliance officer, Senior Management, and Governing Body of the futures commission merchant.

(3) Each futures commission merchant shall document all internal and external reviews and testing of its Risk Management Program and written risk management policies and procedures including the date of the review or test; the results; any deficiencies identified; the corrective action taken; and the date that corrective action was taken. Such documentation shall be provided to Commission staff, upon request.

(g) *Distribution of risk management policies and procedures.* The Risk Management Program shall include procedures for the timely distribution of its written risk management policies and procedures to relevant supervisory personnel. Each futures commission merchant shall maintain records of the persons to whom the risk management policies and procedures were distributed and when they were distributed.

(h) *Recordkeeping.* (1) Each futures commission merchant shall maintain copies of all written approvals required by this section.

(2) All records or reports, including, but not limited to, the written policies and procedures and any changes thereto, that a futures commission merchant is required to maintain pursuant to this regulation shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission.

5. Amend § 1.12 by revising paragraphs (a)(1) and (2), (b)(1), (2), and (4), (c), (d), (e), (f)(2) through (4), (f)(5)(i), (g), (h), and (i), and by adding new paragraphs (j), (k), (l), (m), and (n), to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(1) Give notice, as set forth in paragraph (n) of this section, that the applicant's or registrant's adjusted net capital is less than required by § 1.17 of this part or by other capital rule, identifying the applicable capital rule. The notice must be given immediately after the applicant or registrant knows or should have known that its adjusted net capital is less than required by any of the aforesaid rules to which the applicant or registrant is subject; and

(2) Provide together with such notice documentation, in such form as necessary, to adequately reflect the applicant's or registrant's capital condition as of any date on which such person's adjusted net capital is less than the minimum required; *Provided, however,* that if the applicant or registrant cannot calculate or otherwise immediately determine its financial condition, it must provide the notice required by paragraph (a)(1) of this section and include in such notice a statement that the entity cannot presently calculate its financial condition. The applicant or registrant must provide similar documentation of its financial condition for other days as the Commission may request.

(b) * * *

(1) 150 percent of the minimum dollar amount required by § 1.17(a)(1)(i)(A) of this part;

(2) 110 percent of the amount required by § 1.17(a)(1)(i)(B) of this part;

* * * * *

(4) For securities brokers or dealers, the amount of net capital specified in Rule 17a–11(c) of the Securities and Exchange Commission (17 CFR 240.17a–11(c)), must file notice to that effect, as set forth in paragraph (n) of this section, as soon as possible and no later than twenty-four (24) hours of such event.

(c) If an applicant or registrant at any time fails to make or keep current the books and records required by these regulations, such applicant or registrant must, on the same day such event occurs, provide notice of such fact as specified in paragraph (n) of this section, specifying the books and records which have not been made or which are not current, and as soon as possible, but not later than forty-eight (48) hours after giving such notice, file a report as required by paragraph (n) of this section stating what steps have been and are being taken to correct the situation.

(d) Whenever any applicant or registrant discovers or is notified by an independent public accountant, pursuant to § 1.16(e)(2) of this part, of the existence of any material inadequacy, as specified in § 1.16(d)(2) of this part, such applicant or registrant must give notice of such material inadequacy, as provided in paragraph (n) of this section, as soon as possible but not later than twenty-four (24) hours of discovering or being notified of the material inadequacy. The applicant or registrant must file, in the manner provided for under paragraph (n) of this section, a report stating what steps have been and are being taken to correct the material inadequacy within forty-eight (48) hours of filing its notice of the material inadequacy.

(e) Whenever any self-regulatory organization learns that a member registrant has failed to file a notice or report as required by this section, that self-regulatory organization must immediately report this failure by notice, as provided in paragraph (n) of this section.

(f) * * *

(2) Whenever a registered futures commission merchant determines that any position it carries for another registered futures commission merchant or for a registered leverage transaction merchant must be liquidated immediately, transferred immediately or that the trading of any account of such futures commission merchant or leverage transaction merchant shall be only for purposes of liquidation, because the other futures commission merchant or the leverage transaction merchant has failed to meet a call for margin or to make other required deposits, the carrying futures commission merchant must immediately give notice, as provided in paragraph (n) of this section, of such a determination.

(3) Whenever a registered futures commission merchant determines that an account which it is carrying is undermargined by an amount which exceeds the futures commission merchant's adjusted net capital determined in accordance with § 1.17 of this part, the futures commission merchant must immediately provide notice, as provided in paragraph (n) of this section, of such a determination to the designated self-regulatory organization and the Commission. This paragraph (f)(3) shall apply to any account carried by the futures

commission merchant, whether a customer, noncustomer, omnibus or proprietary account. For purposes of this paragraph (f)(3), if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account, or has guaranteed an account in addition to its own account, all such accounts shall be combined.

(4) A futures commission merchant shall provide immediate notice, as provided in paragraph (n) of this section, whenever any commodity interest account it carries is subject to a margin call, or call for other deposits required by the futures commission merchant, that exceeds the futures commission merchant's excess adjusted net capital, determined in accordance with § 1.17 of this part, and such call has not been answered by the close of business on the day following the issuance of the call. This applies to all accounts carried by the futures commission merchant, whether customer, noncustomer, or omnibus, that are subject to margining, including commodity futures, cleared swaps, and options. In addition to actual margin deposits by an account owner, a futures commission merchant may also take account of favorable market moves in determining whether the margin call is required to be reported under this paragraph.

(5)(i) A futures commission merchant shall provide immediate notice, as provided in paragraph (n) of this section, whenever its excess adjusted net capital is less than six percent of the maintenance margin required by the futures commission merchant on all positions held in accounts of a noncustomer other than a noncustomer who is subject to the minimum financial requirements of:

(A) A futures commission merchant, or

(B) The Securities and Exchange Commission for a securities broker or dealer.

* * * * *

(g) A futures commission merchant shall provide notice, as provided in paragraph (n) of this section, of a substantial reduction in capital as compared to that last reported in a financial report filed with the Commission pursuant to § 1.10 of this part. This notice shall be provided as follows:

(1) If any event or series of events, including any withdrawal, advance, loan or loss cause, on a net basis, a reduction in net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h) of this part, tentative net capital as defined in the rules of the Securities and Exchange Commission) of 20 percent or more, notice must be provided as provided in paragraph (n) of this section within two business days of the event or series of events causing the reduction stating the reason for the reduction and steps the futures commission merchant will be taking to ensure an appropriate level of net capital is maintained by the futures commission merchant; and

(2) If equity capital of the futures commission merchant or a subsidiary or affiliate of the futures commission merchant consolidated pursuant to § 1.17(f) of this part (or 17 CFR 240.15c3–1e) would be withdrawn by action of a stockholder or a partner or a limited liability company member or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, or an unsecured advance or loan would be made to a stockholder, partner, sole proprietor, limited liability company member, employee or affiliate, such that the withdrawal, advance or loan would cause, on a net basis, a reduction in excess adjusted net capital (or, if the futures commission merchant is qualified to use the filing option available under § 1.10(h) of this part, excess net capital as defined in the rules of the Securities and Exchange Commission) of 30 percent or more, notice must be provided as provided in paragraph (n) of this section at least two business days prior to the withdrawal, advance or loan that would cause the reduction: *Provided, however,* That the provisions of paragraphs (g)(1) and (g)(2) of this section do not apply to any futures or securities transaction in the ordinary course of business between a futures commission merchant and any affiliate where the futures commission merchant makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for such transaction within two business days from the date of the transaction.

(3) Upon receipt of such notice from a futures commission merchant, or upon a reasonable belief that a substantial reduction in capital has occurred or will occur, the Director of the Division of Swap Dealer and Intermediary Oversight or the Director's designee may require that the futures commission merchant provide or cause a Material Affiliated Person (as that term is defined in § 1.14(a)(2) of this part) to provide, within three business days from the date of request or such shorter period as the Division Director or designee may specify, such other information as the Division Director or designee determines to be necessary based upon market conditions, reports provided by the futures commission merchant, or other available information.

(h) Whenever a person registered as a futures commission merchant knows or should know that the total amount of its funds on deposit in segregated accounts on behalf of customers trading on designated contract markets, or the amount of funds on deposit in segregated accounts for customers transacting in Cleared Swaps under part 22 of this chapter, or that the total amount set aside on behalf of customers trading on non-United States markets under part 30 of this chapter, is less than the total amount of such funds required by the Act and the regulations to be on deposit in segregated or secured amount accounts on behalf of such customers, the registrant must report such deficiency immediately by notice to the registrant's designated self-regulatory organization and the Commission, as provided in paragraph (n) of this section.

(i) A futures commission merchant must provide immediate notice, as set forth in paragraph (n) of this section, whenever it discovers or is informed that it has invested funds held for futures customers trading on designated contract markets pursuant to § 1.20 of this part, Cleared Swaps Customer Collateral, as defined in § 22.1 of this chapter, or 30.7 Customer Funds, as defined in § 30.1 of this chapter, in instruments that are not permitted investments under § 1.25 of this part, or has otherwise violated the requirements governing the investment of funds belonging to customers under § 1.25 of this part.

(j) A futures commission merchant must provide immediate notice, as provided in paragraph (n) of this section, whenever the futures commission merchant does not hold a sufficient amount of funds in segregated accounts for futures customers under § 1.20 of this part, in segregated accounts for Cleared Swaps Customers under part 22 of this chapter, or in secured amount accounts for customers trading on foreign market under part 30 of this chapter to meet the futures commission merchant's targeted residual interest in the segregated or secured amount accounts pursuant to its policies and procedures required under § 1.11 of this part, or whenever the futures commission merchant's amount of residual interest in any such accounts is less than the sum of all margin deficits for such accounts.

(k) A futures commission merchant must provide immediate notice, as provided in paragraph (n) of this section, whenever the futures commission merchant, or the futures commission merchant's parent or material affiliate, experiences a material adverse impact to its creditworthiness or ability to fund its obligations.

(l) A futures commission merchant must provide immediate notice, as provided in paragraph (n) of this section, whenever the futures commission merchant experiences a material change in its operations or risk profile, including a change in the senior management of the futures commission merchant, the establishment or termination of a line of business, a material adverse change in the futures commission merchant's clearing arrangements, or a material adverse change to the futures commission merchant's credit arrangements, including any change that could adversely impact the firm's liquidity resources.

(m) In the event that a futures commission merchant receives a notice, examination report, or any other correspondence from a designated self-regulatory organization, the Securities and Exchange Commission or a securities industry self-regulatory organization, the futures commission merchant must immediately file a copy of such notice, examination report, or any other correspondence, and the registrant's response, as appropriate, as provided in paragraph (n) of this section.

(n) *Notice.* (1) Every notice and report required to be filed by this section by a futures commission merchant or a self-regulatory organization must be filed with the Commission, with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and report required to be filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Every notice or report that is required to be filed by this section by a futures commission merchant or a self-regulatory organization must include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the reporting event.

(2) Every notice and report which an introducing broker or applicant for registration as an introducing broker is required to file by paragraphs (a), (c), and (d) of this section must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with every futures commission merchant carrying or intending to carry customer accounts for the introducing broker or applicant for registration as an introducing broker. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission. Every notice or report that is required to be filed by this section by an introducing broker or applicant for registration as an introducing broker must include a discussion of how the reporting event originated and what steps have been, or are being taken, to address the reporting event.

(3) Every notice or report that is required to be filed by a futures commission merchant with the Commission or with a designated self-regulatory organization under this section must be in writing and must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission; *Provided, however,* that if the registered futures commission merchant cannot file the notice or report using the electronic transmission approved by the Commission due to a transmission or systems failure, the futures commission merchant must immediately contact the Commission's Regional office with jurisdiction over the futures commission merchant as provided in § 140.02 of this chapter, and by email to *FCMNotice@CFTC.gov.* Any such electronic submission must clearly indicate the futures commission merchant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

6. Amend § 1.15 by revising paragraph (a)(4) to read as follows:

§ 1.15 Risk assessment reporting requirements for futures commission merchants.

(a) * * *

(4) The reports required to be filed pursuant to paragraphs (a)(1) and (2) of this section must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

* * * * *

7. Amend § 1.16 by revising paragraphs (a)(4), (b)(1), (c)(1), (c)(2), and (f)(1)(i)(C), and by adding paragraph (b)(4) to read as follows:

§ 1.16 Qualifications and reports of accountants.

(a) * * *

(4) *Customer.* The term ''customer'' means customer, as defined in § 1.3 of this part, and 30.7 Customer, as defined in § 30.1 of this chapter.

(b) *Qualifications of accountants.* (1) The Commission will recognize any person as a certified public accountant who is duly registered and in good standing as such under the laws of the place of his residence or principal office; *Provided, however,* that a certified public accountant engaged to conduct an examination of a futures commission merchant must be registered with the Public Company Accounting Oversight Board, have undergone an examination by the Public Company Accounting Oversight Board, and any deficiencies noted during such examination must have been remediated to the satisfaction of the Public Company Accounting Oversight Board within three years of such report.

* * * * *

(4) The governing body of each futures commission merchant must ensure that the certified public accountant engaged is duly qualified to perform an audit of the futures commission merchant. Such an evaluation of the qualifications of the certified public accountant should include, among other issues, the certified public accountant's experience in auditing futures commission merchants, the depth of the certified public accountant's staff, the certified public accountant's knowledge of the Act and Regulations, the size and geographic location of the futures commission merchant, and the independence of the certified public accountant.

(c) * * *

(1) *Technical requirements.* The accountant's report must:

(i) Be dated;

(ii) Indicate the city and State where issued; and

(iii) Identify without detailed enumeration the financial statements covered by the report.

(2) *Representations as to the audit.* The accountant's report must state whether the audit was made in accordance with U.S. generally accepted auditing standards after full consideration to the auditing standards adopted by the Public Company Accounting Oversight Board, and must designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted and the reasons for their omission. However, nothing in this paragraph (c)(2) shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purposes of expressing the opinion required by paragraph (c)(3) of this section.

* * * * *

(f)(1) * * *

(i) * * *

(C) Any copy that under this paragraph (f)(1)(i) is required to be filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

* * * * *

8. Amend § 1.17 by revising paragraphs (a)(4), (b)(2), (b)(7), (c)(5)(v), (c)(5)(viii), and (c)(5)(ix) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

(a) * * *

(4) A futures commission merchant who is not in compliance with this section, or is unable to demonstrate such compliance as required by paragraph (a)(3) of this section, or who cannot certify to the Commission immediately upon request and demonstrate with verifiable evidence that it has sufficient access to liquidity to continue operating as a going concern, must transfer all customer accounts and immediately cease doing business as a futures commission merchant until such time as the firm is able to demonstrate such compliance; *Provided, however,* The registrant may trade for liquidation purposes only unless otherwise directed by the Commission and/or the designated self-regulatory organization; *And, Provided further,* That if such registrant immediately demonstrates to the satisfaction of the Commission or the designated self-regulatory organization the ability to achieve compliance, the Commission or the designated self-regulatory organization may in its discretion allow such registrant up to a maximum of 10 business days in which to achieve compliance without having to transfer accounts and cease doing business as required above. Nothing in this paragraph (a)(4) shall be construed as preventing the Commission or the designated self-regulatory organization from taking action against a registrant for non-compliance with any of the provisions of this section.

* * * * *

(b) * * *

(2) *Customer.* This term means a futures customer as defined in § 1.3 of this chapter, a cleared over the counter customer as defined in paragraph (b)(10) of this section, and a 30.7 Customer as defined in § 30.1 of this chapter.

* * * * *

(7) *Customer account.* This term means an account in which commodity futures, options or cleared over the counter derivative positions are carried on the books of the applicant or registrant which is an account that is included in the definition of customer as defined in § 1.17(b)(2).

* * * * *

(c) * * *

(5) * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant that invests funds deposited by futures customers as defined in § 1.3 of this part, Cleared Swaps Customers as defined in § 22.1 of this chapter, and 30.7 Customers as defined in § 30.1 of this chapter in securities as permitted investments under § 1.25 of this part, the deductions specified in Rule 240.15c3–1(c)(2)(vi) or Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi) and 17 CFR 240.15c3–1(c)(2)(vii)) (''securities haircuts''). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. Futures commission merchants must maintain their written policies and procedures in accordance with § 1.31 of this part;

* * * * *

(viii) In the case of a futures commission merchant, for undermargined customer commodity futures accounts and commodity option customer accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which are outstanding no more than one business day. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary, after application of calls for margin or other required deposits outstanding no more than one business day, to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(viii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this subparagraph shall be the lesser of (A) the value attributable to the asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of the asset after application of the percentage deductions specified in this paragraph (c)(5);

(ix) In the case of a futures commission merchant, for undermargined commodity futures and commodity option noncustomer and omnibus accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin or other required deposits which

are outstanding no more than one business day. If there are no such maintenance margin requirements or clearing organization margin requirements, then the amount of funds required to provide margin equal to the amount necessary after application of calls for margin or other required deposits outstanding no more than one business day to restore original margin when the original margin has been depleted by 50 percent or more: *Provided,* To the extent a deficit is excluded from current assets in accordance with paragraph (c)(2)(i) of this section such amount shall not also be deducted under this paragraph (c)(5)(ix). In the event that an owner of a noncustomer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account the value attributable to such asset for purposes of this subparagraph shall be the lesser of the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or the market value of such asset after application of the percentage deductions specified in this paragraph (c)(5);

* * * * *

9. Revise § 1.20 to read as follows:

§ 1.20 Futures customer funds to be segregated and separately accounted for.

(a) *General.* A futures commission merchant must separately account for all futures customer funds and segregate such funds as belonging to its futures customers. A futures commission merchant shall deposit futures customer funds under an account name which clearly identifies them as futures customer funds and shows that such funds are segregated as required by sections 4d(a) and 4d(b) of the Act and this part. A futures commission merchant must at all times maintain in the separate account or accounts money, securities and property in an amount at least sufficient in the aggregate to cover its total obligations to all futures customers. The futures commission merchant must perform appropriate due diligence as required by § 1.11 of this part on any and all locations of futures customer funds, as specified in paragraph (b) of this section, to ensure that the location in which the futures commission merchant has deposited such funds is a financially sound entity.

(b) *Location of futures customer funds.* A futures commission merchant may deposit futures customer funds, subject to the risk management policies and procedures of the futures commission merchant required by § 1.11 of this part, with the following depositories:

(1) A bank or trust company;

(2) A derivatives clearing organization; or

(3) Another futures commission merchant.

(c) *Limitation on the holding of futures customer funds outside of the United States.* A futures commission merchant may hold futures customer funds with a depository outside of the United States only in accordance with § 1.49 of this part.

(d) *Written acknowledgment from depositories.* (1) A futures commission merchant must obtain a written acknowledgment from each bank, trust company, derivatives clearing organization, or futures commission merchant prior to or contemporaneously with the opening of an account by the futures commission merchant with such depositories; *Provided, however,* that a written acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the segregation of futures customer funds in accordance with all relevant provisions of the Act and the rules and orders promulgated thereunder.

(2) The written acknowledgment must be in the form as set out in Appendix A to this part.

(3) A futures commission merchant may deposit futures customer funds only with a depository that provides the Commission and the futures commission merchant's designated self-regulatory organization with direct, read-only access to account information on 24-hour a day basis. The Commission and the futures commission merchant's designated self-regulatory organization must receive the direct access when the account is opened. The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide direct and immediate account access to the Commission and the futures commission merchant's designated self-regulatory organization without further notice to or consent from the futures commission merchant.

(4) A futures commission merchant may deposit futures customer funds only with a depository that agrees to provide the Commission and the futures commission merchant's designated self-regulatory organization with a copy of the executed written acknowledgment within three business days of the opening of the account. The Commission must receive the written acknowledgment from the depository via electronic mail at *acknowledgmentletters@cftc.gov.* The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide the written acknowledgment to the Commission and to the futures commission merchant's designated self-regulatory organization without further notice to or consent from the futures commission merchant.

(5) A futures commission merchant may deposit futures customer funds only with a depository that agrees to reply promptly and directly to the Commission's or to the futures commission merchant's designated self-regulatory organization's requests for confirmation of account balances or other account information without further notice to or consent from the futures commission merchant. The written acknowledgment must contain the futures commission merchant's authorization to the depository to respond directly and immediately to requests from the Commission or the futures commission merchant's designated self-regulatory organization for confirmation of account balances and other account information without further notice to or consent from the futures commission merchant.

(6) The futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the manner specified by the Commission and in no event later than the later of:

(i) The effective date of this rule; or

(ii) Three business days after the account is opened.

(7) A futures commission merchant shall amend the written acknowledgment and promptly file the amended acknowledgment with the Commission within 120 days of any changes in the following:

(i) The name or business address of the futures commission merchant;

(ii) The name or business address of the bank, trust company, derivatives clearing organization or futures commission merchant receiving futures customer funds; or

(iii) The account number(s) under which futures customer funds are held.

(8) A futures commission merchant must maintain each written acknowledgment readily accessible in its files in accordance with § 1.31 of this part, for as long as the account remains open, and thereafter for the period provided in § 1.31 of this part.

(e) *Commingling.* (1) A futures commission merchant may for convenience commingle the futures customer funds that it receives from, or on behalf of, multiple futures customers in a single account or multiple accounts with one or more of the depositories listed in paragraph (b) of this section.

(2) A futures commission merchant shall not commingle futures customer funds with the money, securities or property of such futures commission merchant, or with any proprietary account of such futures commission merchant, or use such funds to secure or guarantee the obligation of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant; *Provided, however,* a futures commission merchant may deposit proprietary funds in segregated accounts as permitted under § 1.23 of this part.

(3) A futures commission merchant may not commingle futures customer funds with funds deposited by 30.7 Customers as defined in § 30.1 of this chapter and set aside in separate accounts as required by part 30 of this chapter, or with funds deposited by Cleared Swaps Customers as defined in § 22.1 of this chapter and held in segregated accounts pursuant to Section 4d(f) of the Act; *Provided, however,* that a futures commission merchant may commingle futures customer funds with funds deposited by 30.7 Customers or Cleared Swaps Customers if expressly permitted by a Commission regulation or order, or by a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter.

(f) *Limitation on use of futures customer funds.* (1) A futures commission merchant shall treat and deal with the funds of a futures customer as belonging to such futures customer. A futures commission merchant shall not use the funds of a futures customer to secure or guarantee the commodity interests, or to secure or extend the credit, of any person other than the futures customer for whom the funds are held.

(2) A futures commission merchant shall obligate futures customer funds to a derivatives clearing organization, a futures commission merchant, or any depository solely to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or commodity option transactions of futures customers; *Provided, however,* that a futures commission merchant is permitted to use the funds belonging to a futures customer that are necessary in the normal course of business to pay lawfully accruing fees or expenses on behalf of the futures customer's positions including commissions, brokerage, interest, taxes, storage and other fees and charges.

(3) No person, including any derivatives clearing organization or any depository, that has received futures customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the futures customers of the futures commission merchant which deposited such funds.

(g) *Derivatives clearing organizations.* (1) *General.* All futures customer funds received by a derivatives clearing organization from a member to purchase, margin, guarantee, secure or settle the trades, contracts or commodity options of the clearing member's futures customers and all money accruing to such futures customers as the result of trades, contracts or commodity options so carried shall be separately accounted for and segregated as belonging to such futures customers, and a derivatives clearing organization shall not hold, use or dispose of such futures customer funds except as belonging to such futures customers. A derivatives clearing organization shall deposit futures customer funds under an account name that clearly identifies them as futures customer funds and shows that the futures customer funds are segregated as required by section 4(d)(a) and 4d(b) of the Act and this part.

(2) *Location of futures customer funds.* A derivatives clearing organization may deposit futures customer funds with a bank or trust company, which shall include a Federal Reserve Bank with respect to deposits of a systemically important derivatives clearing organization.

(3) *Limitation on the holding of futures customer funds outside of the United States.* A derivatives clearing organization may hold futures customer funds with a depository outside of the United States only in accordance with § 1.49 of this part.

(4) *Written acknowledgment from depositories.* (i) A derivatives clearing organization must obtain a written acknowledgment from each depository prior to or contemporaneously with the opening of a futures customer funds account;

(ii) The written acknowledgment must be in the form as set out in Appendix A to this part;

(iii) A derivatives clearing organization may deposit futures customer funds only with a depository that provides the Commission with direct, read-only access to account information on 24-hour a day basis. The Commission must receive the direct access when the account is opened. The written acknowledgment must contain the derivatives clearing organization's authorization to the depository to provide direct and immediate account access to the Commission without further notice to or consent from the derivatives clearing organization;

(iv) A derivatives clearing organization may deposit futures customer funds only with a depository that agrees to provide the Commission with a copy of the executed written acknowledgment within three business days of the opening of the account. The Commission must receive the written acknowledgment from the depository via electronic mail at *acknowledgmentletters@cftc.gov.* The written acknowledgment must contain the derivatives clearing organization's authorization to the depository to provide the written acknowledgment to the Commission without further notice to or consent from the derivatives clearing organization;

(v) A derivatives clearing organization may deposit futures customer funds only with a depository that agrees to reply promptly and directly to the Commission's requests for confirmation of account balances or other account information without further notice to or consent from the derivatives clearing organization. The written acknowledgment must contain the derivatives clearing organization's authorization to the depository to respond directly and immediately to requests from the Commission for confirmation of account balances and other account information without further notice to or consent from the derivatives clearing organization;

(vi) A derivatives clearing organization shall promptly file a copy of the written acknowledgment with the Commission in the manner specified by the Commission and in event later than the later of:

(A) The effective date of this rule; or

(B) Three business days after the account is opened.

(vii) A derivatives clearing organization shall amend the written acknowledgment and promptly file the amended acknowledgment with the Commission within 120 days of any changes in the following:

(A)The name or business address of the derivatives clearing organization;

(B) The name or business address of the depository receiving futures customer funds; or

(C) The account number(s) under which futures customer funds are held.

(viii) A derivatives clearing organization must maintain each written acknowledgment readily accessible in its files in accordance with § 1.31 of this part, for as long as the account remains open, and thereafter for the period provided in § 1.31 of this part.

(5) *Commingling.* (i) A derivatives clearing organization may for

convenience commingle the futures customer funds that it receives from, or on behalf of, multiple futures commission merchants in a single account or multiple accounts with one or more of the depositories listed in paragraph (g)(2) of this section.

(ii) A derivatives clearing organization shall not commingle futures customer funds with the money, securities or property of such derivatives clearing organization or with any proprietary account of any of its clearing members, or use such funds to secure or guarantee the obligations of, or extend credit to, such derivatives clearing organization or any proprietary account of any of its clearing members.

(iii) A derivatives clearing organization may not commingle funds held for futures customers with funds deposited by clearing members on behalf of their 30.7 Customers as defined in § 30.1 of this chapter and set aside in separate accounts as required by part 30 of this chapter, or with funds deposited by clearing members on behalf of their Cleared Swaps Customers as defined in § 22.1 of this chapter and held in segregated accounts pursuant section 4d(f) of the Act; *Provided, however,* that a derivatives clearing organization may commingle futures customer funds with funds deposited by clearing members on behalf of their 30.7 Customers or Cleared Swaps Customers if expressly permitted by a Commission regulation or order, or by a derivatives clearing organization rule approved in accordance with § 39.15(b)(2) of this chapter.

(h) *Immediate availability of bank and trust company deposits.* All futures customer funds deposited by a futures commission merchant or a derivatives clearing organization with a bank or trust company must be immediately available for withdrawal upon the demand of the futures commission merchant or derivatives clearing organization.

(i) *Requirements as to Amount.* (1) For purposes of this paragraph (i), the term ''account'' shall mean the entries on the books and records of a futures commission merchant pertaining to the futures customer funds of a particular futures customer.

(2) The futures commission merchant must reflect in the account that it maintains for each futures customer:

(i) The market value of any futures customer funds that it receives from such customer, as adjusted by:

(A) Any uses permitted under § 1.20(f) of this part;

(B) Any accruals on permitted investments of such collateral under § 1.25 of this part that, pursuant to the futures commission merchant's customer agreement with that customer, are creditable to such customer;

(C) Any gains and losses with respect to contracts for the purchase or sale of a commodity for future delivery and any options on such contracts;

(D) Any charges lawfully accruing to the futures customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(E) Any appropriately authorized distribution or transfer of such collateral.

(ii) The amount of collateral required for the futures customer's contracts for the purchase or sale of a commodity for future delivery and any options on such contracts at each derivatives clearing organization on which the futures commission merchant is a member, or by each other futures commission merchant through which the futures commission merchant clears futures customer contracts, and the total of such required collateral amounts.

(3)(i) If the market value of futures customer funds in the account of a futures customer is positive after adjustments, then that account has a credit balance. If the market value of futures customer funds in the account of a futures customer is negative after adjustments, then that account has a debit balance.

(ii) If the value of the futures customer funds, as calculated in paragraph (i)(2)(i) of this section, for a futures customer's account is less than the total amount of collateral required for that account's contracts for the purchase or sale of a commodity for future delivery and any options on such contracts at derivatives clearing organizations, as calculated in paragraph (i)(2)(ii) of this section, the difference is a margin deficit.

(4) The futures commission merchant must maintain in segregation an amount equal to the sum of any credit balances that the futures customers of the futures commission merchant have in their accounts, excluding from such sum any debit balances that the futures customers of the futures commission merchant have in their accounts. In addition, the futures commission merchant must at all times maintain residual interest in segregated fund sufficient to exceed the sum of all margin deficits that the futures customers of the futures commission merchant have in their accounts. Such residual interest may not be withdrawn pursuant to § 1.23 of this part.

Appendix A to § 1.20—Acknowledgment Letter for CFTC Regulation 1.20 Customer Segregated Account

[Date]

[Name and Address of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

We refer to the Segregated Account(s) which [Name of Futures Commission Merchant or Derivatives Clearing Organization] (''we'' or ''our'') have opened or will open with [Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant or Derivatives Clearing Organization] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 1.20 Customer Segregated Account

Account Number(s): [ ]

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively the ''Funds'') of our customers who trade commodities, options, swaps, other cleared OTC derivatives products and other products, as required by Commodity Futures Trading Commission (''CFTC'') Regulations, including Regulation 1.20, as amended; that the Funds held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own funds and all other accounts maintained by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, nor may they be used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating non-cash assets held in the Account(s) for purposes of variation settlement or posting initial (original) margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization of which we are a member, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place. You agree to respond promptly and directly to requests for confirmation of account balances and other account information from an appropriate officer, agent, or employee of the CFTC or a self-regulatory organization of which we are a member, without further notice to or consent from the futures

commission merchant or derivatives clearing organization, as applicable. You also agree that, immediately upon instruction by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member, you will provide any and all information regarding or related to the Funds or the Accounts as shall be specified in such instruction and as directed in such instruction. You further agree that you will provide the CFTC and our designated self-regulatory organization with the necessary software, a user log-in, and password that will allow the CFTC and our designated self-regulatory organization to have read-only access to the accounts listed above on your Web site or via an alternative electronic medium on a 24-hour a day basis.

You acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or from the director of the Division of Clearing and Risk of the CFTC, the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees.

We will not hold you responsible for acting pursuant to any instruction from the CFTC or the self-regulatory organization upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by the director of the Division of Clearing and Risk of the CFTC, the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member.

In the event that we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court. Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s), nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed. You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that you have no notice of or actual knowledge of, or could not reasonably know of, a violation of the Act or other provision of law by us; and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations. You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, including for the avoidance of doubt, regardless of the change in name of any party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter. You further acknowledge and agree to provide a copy of this fully executed letter directly to the CFTC (via electronic mail to acknowledgmentletters@cftc.gov) and our designated self-regulatory organization.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Bank, Trust Company, Derivatives Clearing Organization or Futures Commission Merchant]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

10. Revise § 1.22 to read as follows:

§ 1.22 Use of futures customer funds restricted.

(a) No futures commission merchant shall use, or permit the use of, the futures customer funds of one futures customer to purchase, margin, or settle the trades, contracts, or commodity options of, or to secure or extend the credit of, any person other than such futures customer. The prohibition on the use of one futures customer's funds to extend credit to, or to purchase, margin, or settle the contracts of another person applies at all times. For this purpose, a futures commission merchant which operationally commingles the funds of its futures customers must ensure that at all times its residual interest in futures customer funds exceeds the sum of the margin deficits of all of its futures customers.

(b) Futures customer funds shall not be used to carry trades or positions of the same futures customer other than in contracts for the purchase of sale of any commodity for future delivery or for options thereon traded through the facilities of a designated contract market.

11. Revise § 1.23 to read as follows:

§ 1.23 Interest of futures commission merchant in segregated futures customer funds; additions and withdrawals.

(a)(1) The provision in sections 4d(a)(2) and 4d(b) of the Act and the provision in § 1.20 of this part that prohibit the commingling of futures customer funds with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the futures customer funds segregated as required by the Act and the regulations in this part and set apart for the benefit of futures customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated futures customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this part, as it may deem necessary to ensure any and all futures customers' accounts from becoming undersegregated at any time.

(2) If a futures commission merchant discovers at any time that it is holding insufficient funds in segregated accounts to meet its obligations under §§ 1.20 and 1.22 of this part, the futures commission merchant shall immediately deposit sufficient funds into segregation to bring the account into compliance.

(b) A futures commission merchant may not withdraw funds on any business day for its own proprietary use from an account or accounts holding futures customer funds unless the futures commission merchant has prepared the daily segregation

calculation required by § 1.32 of this part as of the close of business on the previous business day. A futures commission merchant that has completed its daily segregation calculation may make withdrawals for its own use, to the extent of its actual residual financial interest in funds held in segregated futures accounts, adjusted to reflect market activity and other events that may have decreased the amount of the firm's residual financial interest since the close of business on the previous business day, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s), *however,* shall not result in the funds of one futures customer being used to purchase, margin or carry the trades, contracts or commodity options, or extend the credit of any other futures customer or other person.

(c) Notwithstanding paragraphs (a) and (b) of this section, each futures commission merchant shall establish a targeted residual interest (*i.e.,* excess funds) that is in an amount that, when maintained as its residual interest in the segregated funds accounts, reasonably ensures that the futures commission merchant shall remain in compliance with the segregated funds requirements at all times. Each futures commission merchant shall establish policies and procedures designed to reasonably ensure that the futures commission merchant maintains the targeted residual amounts in segregated funds at all times. The futures commission merchant shall maintain sufficient capital and liquidity, and take such other appropriate steps as are necessary or appropriate, to reasonably ensure that such amount of targeted residual interest is maintained as the futures commission merchant's residual interest in the segregated funds accounts at all times. In determining the amount of the targeted residual interest, the futures commission merchant shall analyze all relevant factors affecting the amounts in segregated funds from time to time, including without limitation various factors, as applicable, relating to the nature of the futures commission merchant's business including, but not limited to, the composition of the futures commission merchant's customer base, the general creditworthiness of the customer base, the general trading activity of the customers, the types of markets and products traded by the customers, the proprietary trading of the futures commission merchant, the general volatility and liquidity of the markets and products traded by customers, the futures commission merchant's own liquidity and capital needs, and the historical trends in Customer segregated fund balances and debit balances in Customers' and undermargined accounts. The analysis and calculation of the targeted amount of the future commission merchant's residual interest must be described in writing with the specificity necessary to allow the Commission and the futures commission merchant's designated self-regulatory organization to duplicate the analysis and calculation and test the assumptions made by the futures commission merchant. The adequacy of the targeted residual interest and the process for establishing the targeted residual interest must be reassessed periodically by the futures commission merchant and revised as necessary. Notwithstanding any other provision of this section, a futures commission merchant must at all times maintain an amount of residual interest in segregated accounts that exceeds the sum of all margin deficits of its futures customers under § 1.20 of this part, and such residual interest may not be withdrawn by the futures commission merchant.

(d) Notwithstanding any other paragraph of this section, a futures commission merchant may not withdraw funds for its own proprietary use, in a single transaction or a series of transactions on a given business day, from futures accounts if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily segregation calculation required by § 1.32 of this part and computed as of the close of business on the previous business day, unless:

(1) The futures commission merchant's Chief Executive Officer, Chief Finance Officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals;

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (c)(1) of this section pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (c)(1) of this section that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in segregated accounts holding futures customer funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and each recipient's name;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the futures accounts after the withdrawal;

(v) Contain a representation by the Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (c)(1) of this section that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (c)(1) of this section must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission merchant's residual interest since the close of business the previous business day, including known unsecured futures customer debits or deficits, current day market activity and any other withdrawals made from the futures accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of the Commission that has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice; and

(3) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (2) of this section, and before the completion of its next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding futures customer funds, except to or for the benefit of commodity and option customers, without, for each withdrawal, obtaining the approval required under paragraph (c)(1) of this section and filing a written notice in the manner specified under paragraph (c)(2) of this section with the Commission and its designated self-regulatory organization signed by the Chief Executive Officer, Chief Finance Officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the Chief Executive Officer, Chief Finance Officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the segregated accounts holding futures customer funds after the withdrawal; and

(v) Include a representation that, after due diligence, to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the segregation requirements after the withdrawal.

(e) If a futures commission merchant withdraws funds from futures accounts for its own proprietary use, and the withdrawal causes the futures commission merchant to not hold sufficient funds in the futures accounts to meet its targeted residual interest, as required to be computed under § 1.11 of this part, the futures commission merchant should deposit its own funds into the futures accounts to restore the account balance to the targeted residual interest amount by the close of business on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11 of this part. Notwithstanding the foregoing, if at any time the futures commission merchant's residual interest in customer accounts is less than the sum of its futures customers' margin deficits as set forth in § 1.20(i) of this part, the futures commission merchant must immediately restore the residual interest to exceed the sum of such margin deficits. Any proprietary funds deposited in the futures accounts must be unencumbered and otherwise compliant with § 1.25 of this part, as applicable.

12. Amend § 1.25 by removing paragraph (b)(6) and by revising paragraphs (b)(3)(v), (c)(3), (d)(7), (d)(11), and (e) to read as follows:

§ 1.25 Investment of customer funds.

* * * * *

(b) * * *

(3) * * *

(v) *Counterparty concentration limits.* Securities purchased by a futures commission merchant or derivatives clearing organization from a single counterparty, or from one or more counterparties under common ownership or control, subject to an agreement to resell the securities to the counterparty or counterparties, shall not exceed 25 percent of total assets held in segregation or under § 30.7 of this chapter by the futures commission merchant or derivatives clearing organization.

* * * * *

(c) * * *

(3) A futures commission merchant or derivatives clearing organization shall maintain the confirmation relating to the purchase in its records in accordance with § 1.31 of this part and note the ownership of fund shares (by book-entry or otherwise) in a custody account of the futures commission merchant or derivatives clearing organization in accordance with § 1.26 of this part. The futures commission merchant or the derivatives clearing organization shall obtain the acknowledgment letter required by § 1.26 of this part from an entity that has substantial control over the fund shares purchased with customer funds and has the knowledge and authority to facilitate redemption and payment or transfer of the customer funds. Such entity may include the fund sponsor or depository acting as custodian for fund shares.

* * * * *

(d) * * *

(7) Securities transferred to the futures commission merchant or derivatives clearing organization under the agreement are held in a safekeeping account with a bank as referred to in paragraph (d)(2) of this section, a Federal Reserve Bank, a derivatives clearing organization, or the Depository Trust Company in an account that complies with the requirements of § 1.26 of this part.

* * * * *

(11) The transactions effecting the agreement are recorded in the record required to be maintained under § 1.27 of this part of investments of customer funds, and the securities subject to such transactions are specifically identified in such record as described in paragraph (d)(1) of this section and further identified in such record as being subject to repurchase and reverse repurchase agreements.

* * * * *

(e) *Deposit of firm-owned securities into segregation.* A futures commission merchant may deposit unencumbered securities of the type specified in this section, which it owns for its own account, into a customer account. A futures commission merchant must include such securities, transfers of securities, and disposition of proceeds from the sale or maturity of such securities in the record of investments required to be maintained by § 1.27 of this part. All such securities may be segregated in safekeeping only with a bank, trust company, derivatives clearing organization, or other registered futures commission merchant in accordance with the provisions of § 1.20 of this part. For purposes of this section and §§ 1.27, 1.28, 1.29, and 1.32 of this part, securities of the type specified by this section that are owned by the futures commission merchant and deposited into a customer account shall be considered customer funds until such investments are withdrawn from segregation in accordance with the provisions of § 1.23 of this part. Investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into a futures customer account pursuant to § 1.26 of the part shall be considered futures customer funds until such investments are withdrawn from segregation in accordance with § 1.23 of this part. Investments permitted by § 1.25 that are owned by the futures commission merchant and deposited into a Cleared Swaps Customer Account, as defined in § 22.1 of this chapter, shall be considered Cleared Swaps Customer Collateral, as defined in § 22.1 of this chapter, until such investments are withdrawn from segregation in accordance with § 22.17 of this chapter.

* * * * *

13. Revise § 1.26 to read as follows:

§ 1.26 Deposit of instruments purchased with futures customer funds.

(a) Each futures commission merchant who invests futures customer funds in instruments described in § 1.25 of this part, except for investments in money market mutual funds, shall separately account for such instruments as futures

customer funds and segregate such instruments as funds belonging to such futures customers in accordance with the requirements of § 1.20 of this part. Each derivatives clearing organization which invests money belonging or accruing to futures customers of its clearing members in instruments described in § 1.25 of this part, except for investments in money market mutual funds, shall separately account for such instruments as customer funds and segregate such instruments as customer funds belonging to such futures customers in accordance with § 1.20 of this part.

(b) Each futures commission merchant or derivatives clearing organization which invests futures customer funds in money market mutual funds, as permitted by § 1.25 of this part, shall separately account for such funds and segregate such funds as belonging to such futures customers. Such funds shall be deposited under an account name which clearly shows that they belong to futures customers and are segregated as required by sections 4d(a) and 4d(b) of the Act and this part. Each futures commission merchant or derivatives clearing organization, upon opening such an account, shall obtain and maintain readily accessible in its files in accordance with § 1.31 of this part, for as long as the account remains open, and thereafter for the period provided in § 1.31 of this part, a written acknowledgment and shall file such acknowledgment in accordance with the requirements of § 1.20 of this part. In the event such funds are held directly with the money market mutual fund or its affiliate, the written acknowledgment letter shall be in the form as set out in Appendix A to this section. In the event such funds are held with a depository the written acknowledgment letter shall be in the form as set out in Appendix A to § 1.20 of this part. In either case, the written acknowledgment letter shall be obtained, provided to the Commission and designated self-regulatory organizations, and retained as required under § 1.20 of this part.

Appendix to § 1.26—Acknowledgment Letter for CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant or Derivatives Clearing Organization] (''we'' or ''our'') on behalf of our customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant or Derivatives Clearing Organization] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 1.26 Customer Segregated Money Market Mutual Fund Account

[If applicable, include any abbreviated name of the Account(s) as reflected in the Depository's electronic systems (provided any such abbreviated name must reflect that the Account(s) is a CFTC regulated customer segregated account)]

Account Number(s): [_____]

(collectively, the ''Account(s)'').

You acknowledge and agree that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of our customers who trade commodities, options, cleared OTC derivatives products and other products (''Commodity Customers''), as required by Commodity Futures Trading Commission (''CFTC'') Regulation 1.26, as amended; that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be separately accounted for and segregated on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 1 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, nor may they be used by us to secure credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place. You agree to respond promptly and directly to requests for confirmation of account balances and other account information from an appropriate officer, agent, or employee of the CFTC or a self-regulatory organization of which we are a member, without further notice to or consent from the futures commission merchant or the derivatives clearing organization, as applicable. You also agree that, immediately upon instruction by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member, you will provide any and all information regarding or related to the Shares or the Accounts as shall be specified in such instruction and as directed in such instruction. You further agree that you will provide the CFTC and our designated self-regulatory organization with the necessary software, a user log-in, and password that will allow the CFTC and our designated self-regulatory organization to have read-only access to the accounts listed above on your Web site on a 24-hour a day basis.

You acknowledge and agree that the Shares in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or from the director of the Division of Clearing and Risk of the CFTC, or from the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees. We will not hold you responsible for acting pursuant to any instruction from the CFTC or from the self-regulatory organization upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by the director of the Division of Clearing and Risk of the CFTC, or the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member. You further acknowledge that we will provide to the CFTC a copy of this acknowledgment. In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s), nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed. You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that you have no notice of or actual knowledge of, or could not reasonably know of, a violation of the Act or other provision of law by us; and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any

governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest our Commodity Customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and,

(3) The agreement under which we invest our Commodity Customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, including for the avoidance of doubt, regardless of the change in name of any party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter. You further acknowledge and agree to provide a copy of this fully executed letter directly to the CFTC (via electronic mail to acknowledgmentletters@cftc.gov) and our designated self-regulatory organization in accordance with CFTC Regulation 1.20.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

Date:

14. Revise § 1.29 to read as follows:

§ 1.29 Gains and losses resulting from investment of customer funds.

(a) The investment of customer funds in instruments described in § 1.25 of this part shall not prevent the futures commission merchant or derivatives clearing organization so investing such funds from receiving and retaining as its own any incremental income or interest income resulting therefrom.

(b) The futures commission merchant or derivatives clearing organization, as applicable, shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25 of this part. No investment losses shall be borne or otherwise allocated to the customers of the futures commission merchant and, if customer funds are invested by a derivatives clearing organization in its discretion, to the futures commission merchant.

15. Revise § 1.30 to read as follows:

§ 1.30 Loans by futures commission merchants; treatment of proceeds.

Nothing in these regulations shall prevent a futures commission merchant from lending its own funds to customers on securities and property pledged by such customers, or from repledging or selling such securities and property pursuant to specific written agreement with such customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of customers shall be treated and dealt with by a futures commission merchant as belonging to such customers, in accordance with and subject to the provisions of the Act and these regulations. A futures commission merchant may not loan funds on an unsecured basis to finance customers' trading, nor may a futures commission merchant loan funds to customers secured by the customer accounts of such customers.

16. Amend § 1.32 by revising the section heading and paragraphs (b) and (c) and by adding paragraphs (d), (e), (f), (g), (h), (i), (j), and (k), to read as follows:

§ 1.32 Reporting of segregated account computation and details regarding the holding of futures customer funds

* * * * *

(b) In computing the amount of futures customer funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular futures customer's account against the current market value of readily marketable securities, less applicable deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3–1(c)(2)(vi)), held for the same futures customer's account. Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, derivatives clearing organization, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) Each futures commission merchant is required to document its segregation computation required by paragraph (a) of this section by preparing a Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges contained in the Form 1–FR–FCM as of the close of each business day. Nothing in this paragraph shall affect the requirement that a futures commission merchant at all times maintain sufficient money, securities and property to cover its total obligations to all futures customers, in accordance with § 1.20 of this part.

(d) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section by noon the following business day.

(e) Each futures commission merchant shall file the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(f) Each futures commission merchant is required to submit to the Commission

and to the firm's designated self-regulatory organization a report listing the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, or any other depository or custodian holding futures customer funds as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(1) The name and location of each entity holding futures customer funds;

(2) The total amount of futures customer funds held by each entity listed in paragraph (f)(1) of this section; and

(3) The total amount of cash and investments that each entity listed in paragraph (f)(1) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(i) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(ii) General obligations of any State or of any political subdivision of a State (municipal securities);

(iii) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(iv) Certificates of deposit issued by a bank;

(v) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(vi) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(vii) Interests in money market mutual funds.

(g) Each futures commission merchant must report the total amount of futures customer-owned securities held by the futures commission merchant as margin collateral and must list the names and locations of the depositories holding such margin collateral.

(h) Each futures commission merchant must report the total amount of futures customer funds that have been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(i) Each futures commission merchant must report which, if any, of the depositories holding futures customer funds under paragraph (f)(1) of this section are affiliated with the futures commission merchant.

(j) Each futures commission merchant shall file the detailed list of depositories required by paragraph (f) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(k) Each futures commission merchant shall retain its daily segregation computation and the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges required by paragraph (c) of this section, and its detailed list of depositories required by paragraph (f) of this section, together with all supporting documentation, in accordance with the requirements of § 1.31 of this part.

17. Revise § 1.52 to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) For purposes of this section, the following terms are defined as follows:

(1) ''Examinations expert'' is defined as a Nationally recognized accounting and auditing firm with substantial expertise in audits of futures commission merchants, risk assessment and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission;

(2) ''Generally accepted auditing standards'' is defined as U.S. generally accepted auditing standards, developed by the Auditing Standards Board of the American Institute of Certified Public Accountants; and

(3) ''Material weakness'' is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstating of the entities financial statements and regulatory computations will not be prevented or detected on a timely basis by the entity's internal controls;

(b)(1) Each self-regulatory organization must adopt rules prescribing minimum financial and related reporting requirements for members who are registered futures commission merchants, registered retail foreign exchange dealers, or registered introducing brokers. The self-regulatory organization's minimum financial and related reporting requirements must be the same as, or more stringent than, the requirements contained in §§ 1.10 and 1.17 of this part, for futures commission merchants and introducing brokers, and §§ 5.7 and 5.12 of this chapter for retail foreign exchange dealers; *provided, however,* that a self-regulatory organization may permit its member registrants that are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h) of this part) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934 (''FOCUS Report''), Part II, Part IIA, or Part II CSE, as applicable, in lieu of Form 1–FR; *provided, further,* that such self-regulatory organization must require such member registrants to provide all information in Form 1–FR that is not included in the FOCUS Report Part provided by such member registrant. The definition of adjusted net capital must be the same as that prescribed in § 1.17(c) of this chapter for futures commission merchants and introducing brokers, and § 5.7(b)(2) of this chapter for futures commission merchants offering or engaging in retail forex transactions and for retail foreign exchange dealers.

(2) In addition to the requirements set forth in paragraph (b)(1) of this section, each self-regulatory organization that has a futures commission merchant member registrant must adopt rules prescribing risk management requirements for futures commission merchant member registrants that shall be the same as, or more stringent than, the requirements contained in § 1.11 of this part.

(c)(1) Each self-regulatory organization must establish and operate a supervisory program that includes written policies and procedures concerning the application of such supervisory program in the examination of its member registrants for the purpose of assessing whether each member registrant is in compliance with the applicable self-regulatory organization and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements. The supervisory program also must address the following elements:

(i) *Adequate levels and independence of examination staff.* A self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement a supervisory program. Staff of the self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the supervisory program. The self-regulatory organization must

provide annual ethics training to all staff with responsibilities for the supervisory program.

(ii) *Ongoing surveillance.* A self-regulatory organization's ongoing surveillance of member registrants must include the review and analysis of financial reports and regulatory notices filed by member registrants with the designated self-regulatory organization.

(iii) *High-risk firms.* A self-regulatory organization's supervisory program must include procedures for identifying member registrants that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory organization and Commission requirements.

(iv) *On-site examinations.* (A) A self-regulatory organization must conduct routine periodic on-site examinations of member registrants. Member futures commission merchants and retail foreign exchange dealers must be subject to on-site examinations no less frequently than once every eighteen months. A self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination; *provided, however,* that the scope of each on-site examination of a futures commission merchant or retail foreign exchange dealer must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, recordkeeping, and reporting requirements.

(B) A self-regulatory organization must establish the frequency of on-site examinations of member introducing brokers that do not operate pursuant to guarantee agreements with futures commission merchants or retail foreign exchange dealers using a risk-based approach; *provided, however,* that each introducing broker is subject to an on-site examination no less frequently than once every three years.

(C) A self-regulatory organization must conduct on-site examinations of member registrants in accordance with uniform examination programs and procedures that have been submitted to the Commission.

(v) *Adequate documentation.* A self-regulatory organization must adequately document all aspects of the operation of the supervisory program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(2) In addition to the requirements set forth in paragraph (c)(1) of this section, the supervisory program of a self-regulatory organization that has a registered futures commission merchant member must satisfy the following requirements:

(i) The supervisory program must set forth in writing the examination standards that the self-regulatory organization must apply in its examination of its registered futures commission merchant member. The supervisory program must be based on controls testing as well as substantive testing and must address all areas of risk to which futures commission merchants can reasonably be foreseen to be subject. The determination as to which elements of the supervisory program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant member as well as any additional areas of risk to be addressed in such examination.

(ii) All aspects of the supervisory program, including the standards pursuant to paragraph (c)(2)(iii) of this section, must, at minimum, conform to generally accepted auditing standards after giving full consideration to those auditing standards as prescribed by the Public Company Accounting Oversight Board.

(iii) The supervisory program must, at a minimum, have standards addressing the following:

(A) The ethics of an examiner;

(B) The independence of an examiner;

(C) The supervision, review, and quality control of an examiner's work product;

(D) The evidence and documentation to be reviewed and retained in connection with an examination;

(E) The sampling size and techniques used in an examination;

(F) The examination risk assessment process;

(G) The examination planning process;

(H) Materiality assessment;

(I) Quality control procedures to ensure that the examinations maintain the level of quality expected;

(J) Communications between an examiner and the regulatory oversight committee of the self-regulatory organization of which the registered futures commission merchant is a member;

(K) Communications between an examiner and a futures commission merchant's audit committee of the board of directors or other similar governing body;

(L) Analytical review procedures;

(M) Record retention; and

(N) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues.

(iv) A self-regulatory organization must cause an examinations expert to evaluate the supervisory program and such self-regulatory organization's application of the supervisory program at least once every two years.

(A) The self-regulatory organization must obtain from such examinations expert a written report that includes the following:

(*1*) An affirmation that the examinations expert has evaluated the supervisory program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(*2*) An affirmation that the examinations expert has evaluated the application of the supervisory program by the self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert;

(*3*) The examinations expert's opinion as to whether the supervisory program is reasonably likely to identify a material weakness in internal controls over financial and/or regulatory reporting and in any of the other items that are the subject of an examination conducted in accordance with the supervisory program; and

(*4*) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Institute of Internal Auditors, and The Risk Management Association.

(B) The self-regulatory organization must provide the written report to the Commission no later than fifteen days following the receipt thereof. Upon resolution of any questions or comments raised by the Commission, and upon notice from the Commission that it has no further comments or questions on the supervisory program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions or comments, or otherwise), the self-regulatory organization shall commence applying

such supervisory program as the standard for examining its registered futures commission merchant members.

(v) The supervisory program must require the self-regulatory organization to report to its risk and/or audit committee of the board of directors with timely reports of the activities and findings of the supervisory program to assist the risk and/or audit committee of the board of directors to fulfill its responsibility of overseeing the examination function.

(vi) The initial supervisory program shall be established as follows. Within 120 days following the effective date of this section, or such other time as the Commission may approve, the self-regulatory organization shall submit a proposed supervisory program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (c)(2)(iv)(A)(*1*) and (*3*) of this section from an examinations expert who has evaluated the supervisory program. Upon resolution of any questions or comments raised by the Commission, and upon notice from the Commission that it has no further comments or questions on the proposed supervisory program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the self-regulatory organizations shall commence applying such supervisory program as the standard for examining its members that are registered as futures commission merchants.

(d)(1) Any two or more self-regulatory organizations may file with the Commission a plan for delegating to a designated self-regulatory organization, for any registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one such self-regulatory organization, the function of:

(i) Monitoring and examining for compliance with the minimum financial and related reporting requirements and risk management requirements, including policies and procedures relating to the receipt, holding, investing and disbursement of customer funds, adopted by such self-regulatory organizations and the Commission in accordance with paragraphs (b) and (c) of this section; and

(ii) Receiving the financial reports and notices necessitated by such minimum financial and related reporting requirements; *provided, however,* that the self-regulatory organization that delegates the functions set forth in this paragraph (d)(1) shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(2) If a plan established pursuant to paragraph (d)(1) of this section applies to any registered futures commission merchant, then such plan must include the following elements:

(i) *The Joint Audit Committee.* The self-regulatory organizations that choose to participate in the plan shall form a Joint Audit Committee, consisting of all self-regulatory organizations in the plan as members. The members of the Joint Audit Committee shall establish, operate and maintain a Joint Audit Program in accordance with the requirements of this section to ensure an effective and a high quality program for examining futures commission merchants, to designate the designated self-regulatory organizations that will be responsible for the examinations of futures commission merchants pursuant to the Joint Audit Program, and to satisfy such additional obligations set forth in this section in order to facilitate the examinations of futures commission merchants by their respective designated self-regulatory organizations.

(ii) *The Joint Audit Program.* The Joint Audit Program must, at minimum, satisfy the following requirements.

(A) The purpose of the Joint Audit Program must be to assess whether each registered futures commission merchant member of the Joint Audit Committee members is in compliance with the Joint Audit Program and Commission regulations governing minimum net capital and related financial requirements, the obligation to segregate customer funds, risk management requirements, including policies and procedures relating to the receipt, holding, investment, and disbursement of customer funds, financial reporting requirements, recordkeeping requirements, and sales practice and other compliance requirements.

(B) The Joint Audit Program must include written policies and procedures concerning the application of the Joint Audit Program in the examination of the registered futures commission merchant members of the Joint Audit Committee members.

(C)(*1*) *Adequate levels and independence of examination staff.* A designated self-regulatory organization must maintain staff of an adequate size, training, and experience to effectively implement the Joint Audit Program. Staff of the designated self-regulatory organization, including officers, directors, and supervising committee members, must maintain independent judgment and its actions must not impair its independence nor appear to impair its independence in matters related to the Joint Audit Program. The designated self-regulatory organization must provide annual ethics training to all staff with responsibilities for the Joint Audit Program.

(*2*) *Ongoing surveillance.* A designated self-regulatory organization's ongoing surveillance of futures commission merchant member registrants over which it has oversight responsibilities must include the review and analysis of financial reports and regulatory notices filed by such member registrants with the designated self-regulatory organization.

(*3*) *High-risk firms.* The Joint Audit Program must include procedures for identifying futures commission merchant member registrants over which it has oversight responsibilities that are determined to pose a high degree of potential financial risk, including the potential risk of loss of customer funds. High-risk member registrants must include firms experiencing financial or operational difficulties, failing to meet segregation or net capital requirements, failing to maintain current books and records, or experiencing material inadequacies in internal controls. Enhanced monitoring for high risk firms should include, as appropriate, daily review of net capital, segregation, and secured calculations, to assess compliance with self-regulatory and Commission requirements.

(*4*) *On-site examinations.* A designated self-regulatory organization must conduct routine periodic on-site examinations of futures commission merchant member registrants over which it has oversight responsibilities. Such member registrants must be subject to on-site examinations no less frequently than once every eighteen months. A designated self-regulatory organization shall establish a risk-based method of establishing the scope of each on-site examination, *provided, however,* that the scope of each on-site examination of a futures commission merchant must include an assessment of whether the registrant is in compliance with applicable Commission and self-regulatory organization minimum capital, customer fund protection, recordkeeping, and reporting requirements. A designated self-regulatory organization must conduct on-site examinations of futures commission merchant registrants in accordance with the Joint Audit Program.

(D) The Joint Audit Committee members must adequately document all aspects of the operation of the Joint Audit Program, including the conduct of risk-based scope setting and the risk-based surveillance of high-risk member registrants, and the imposition of remedial and punitive action(s) for material violations.

(E) The Joint Audit Program must set forth in writing the examination standards that a designated self-regulatory organization must apply in its examination of a registered futures commission merchant. The Joint Audit Program must be based on controls testing as well as substantive testing and must address all areas of risk to which registered futures commission merchants can reasonably be foreseen to be subject. The determination as to which elements of the Joint Audit Program are to be performed on any examination must be based on the risk profile of each registered futures commission merchant as well as any additional areas of risk to be addressed in such examination.

(F) All aspects of the Joint Audit Program, including the standards required pursuant to paragraph (d)(2)(ii)(G) of this section, must, at minimum, conform to generally accepted auditing standards after full consideration to those auditing standards as prescribed by the Public Company Accounting Oversight Board.

(G) The Joint Audit Program must have standards addressing those items listed in paragraph (c)(2)(iii) of this section.

(H) The initial Joint Audit Program shall be established as follows. Within 120 days following the effective date of this section, or such other time as the Commission may approve, the Joint Audit Committee members shall submit a proposed initial Joint Audit Program to the Commission for its review and comment, together with a written report that includes the elements found in paragraphs (d)(2)(ii)(I)(*1*) and (*3*) of this section from an examinations expert who has evaluated the Joint Audit Program. Upon resolution of any questions or comments raised by the Commission, and upon notice from the Commission that it has no further comments or questions on the proposed Joint Audit Program as amended (by reason of the considerations of the Commission's questions or comments or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants.

(I) Following the establishment of the Joint Audit Program, no less frequently than once every two years, the Joint Audit Committee members must cause an examinations expert to evaluate the Joint Audit Program and each designated self-regulatory organization's application of the Joint Audit Program. The Joint Audit Committee members must obtain from such examinations expert a written report, and must provide the written report to the Commission no later than forty-five days prior to the annual meeting of the members of the Joint Audit Committee to be held in that year pursuant to paragraph (d)(2)(iii)(A) of this section. The written report must include the following:

(*1*) An affirmation that the examinations expert has evaluated the Joint Audit Program, including the sufficiency of the risk-based approach and the internal controls testing thereof, and comments and recommendations in connection with such evaluation from such examinations expert;

(*2*) An affirmation that the examinations expert has evaluated the application of the Joint Audit Program by each designated self-regulatory organization, and comments and recommendations in connection with such evaluation from such examinations expert;

(*3*) The examinations expert's opinion as to whether the Joint Audit Program is reasonably likely to identify a material deficiency in internal controls over financial and/or regulatory reporting and in any of the other items that are the subject of an examination conducted in accordance with the Joint Audit Program; and

(*4*) A discussion and recommendation of any new or best practices as prescribed by industry sources, including, but not limited to, those from the American Institute of Certified Public Accountants, the Internal Audit Association and The Risk Management Association.

(J) The Joint Audit Program must require each Joint Audit Committee member to report to its risk and/or audit committee of the board of directors with timely reports of the activities and findings of the Joint Audit Program to assist the risk and/or audit committee of the board of directors to fulfill its responsibility of overseeing the examination function.

(iii) *Meetings of the Joint Audit Committee.* (A) No less frequently than once every year, the Joint Audit Committee members must meet to consider whether changes to the Joint Audit Program are appropriate, and in considering such, in meetings corresponding to the biennial written report obtained from an examinations expert pursuant to paragraph (d)(2)(ii)(I) of this section, the Joint Audit Committee members must consider such written report, including the results of the examinations expert's assessment of the Joint Audit Program and any additional recommendations. The Commission's questions, comments and proposals must also be considered. Upon notice from the Commission that it has no further comments or questions on the Joint Audit Program as amended (by reason of the examinations expert's proposals, considerations of the Commission's questions, comments and proposals, or otherwise), the designated self-regulatory organizations shall commence applying such Joint Audit Program as the standard for examining their respective registered futures commission merchants.

(B) In addition to the items considered in paragraph (d)(2)(iii)(A) of this section, the Joint Audit Committee members must consider the following items during the annual meeting:

(*1*) The role of the Joint Audit Committee and its members as it relates to self-regulatory organization responsibilities;

(*2*) Developing and maintaining the Joint Audit Program for all designated self-regulatory organizations to follow with no exceptions;

(*3*) Coordinating self-regulatory organization responsibilities with those of independent certified public accountants, the Commission and other regulators and self-regulatory organizations (*e.g.,* the Securities and Exchange Commission, the Financial Industry Regulatory Authority, and others, as the case may be for futures commission merchants subject to regulation by multiple regulators and self-regulatory organizations);

(*4*) Coordinating and sharing information between the Joint Audit Committee members, including issues and industry concerns in connection with examinations of futures commission merchants;

(*5*) Identifying industry financial and regulatory reporting issues and financial and operational internal control issues and modifying the Joint Audit Program accordingly;

(*6*) Issuing an annual risk alert for futures commission merchants;

(*7*) Issuing an annual examination alert for certified public accountants and designated self-regulatory organization examiners;

(*8*) Responding to industry issues;

(*9*) Providing industry feedback to Commission proposals; and

(*10*) Developing and maintaining a standard of ethics and independence with which all examination units of the Joint Audit Committee members must comply.

(C) Minutes must be taken of all meetings and distributed to all members on a timely basis.

(D) The Commission must receive timely prior notice of each meeting, have to right to attend and participate in each meeting and receive written copies of the reports and minutes required pursuant to paragraphs (d)(2)(ii)(J) and (d)(2)(iii)(C) of this section, respectively.

(3) The plan referenced in paragraph (d)(1) of this section shall not be effective without Commission approval pursuant to paragraph (h) of this section.

(e) Any plan filed under this section may contain provisions for the allocation of expenses reasonably incurred by designated self-regulatory organizations among the self-regulatory organizations participating in such a plan.

(f) A plan's designated self-regulatory organizations must report to:

(1) That plan's other self-regulatory organizations any violation of such other self-regulatory organizations' rules and regulations for which the responsibility to monitor or examine has been delegated to such designated self-regulatory organization under this section; and

(2) The Director of the Division of Swap Dealer and Intermediary Oversight of the Commission any violation of a self-regulatory organization's rules and regulations or any violation of the Commission's regulations for which the responsibility to monitor, audit, or examine has been delegated to such designated self-regulatory organization under this section.

(g) The Joint Audit Committee members may, among themselves, establish programs to provide access to any necessary financial or related information.

(h) After appropriate notice and opportunity for comment, the Commission may, by written notice, approve such a plan, or any part of the plan, if it finds that the plan, or any part of it:

(1) Is necessary or appropriate to serve the public interest;

(2) Is for the protection and in the interest of customers;

(3) Reduces multiple monitoring and multiple examining for compliance with the minimum financial rules of the Commission and of the self-regulatory organizations submitting the plan of any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(4) Reduces multiple reporting of the financial information necessitated by such minimum financial and related reporting requirements by any futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization;

(5) Fosters cooperation and coordination among the self-regulatory organizations; and

(6) Does not hinder the development of a registered futures association under section 17 of the Act.

(i) After the Commission has approved a plan, or part thereof, under paragraph (h) of this section, a self-regulatory organization delegating the functions described in paragraph (d)(1) of this section must notify each of its members that are subject to such a plan:

(1) Of the limited scope of the delegating self-regulatory organization's responsibility for such a member's compliance with the Commission's and self-regulatory organization's minimum financial and related reporting requirements; and

(2) Of the identity of the designated self-regulatory organization that has been delegated responsibility for such a member; *provided, however,* that the self-regulatory organization that delegates, pursuant to paragraph (d) of this section, the functions set forth in paragraphs (b) and (c) of this section shall remain responsible for its member registrants' compliance with the regulatory obligations, and if such self-regulatory organization becomes aware that a delegated function is not being performed as required under this section, the self-regulatory organization shall promptly take any necessary steps to address any noncompliance.

(j) The Commission may at any time, after appropriate notice and opportunity for hearing, withdraw its approval of any plan, or part thereof, established under this section, if such plan, or part thereof, ceases to adequately effectuate the purposes of section 4f(b) of the Act or of this section.

(k) Whenever a registered futures commission merchant, a registered retail foreign exchange dealer, or a registered introducing broker holding membership in a self-regulatory organization ceases to be a member in good standing of that self-regulatory organization, such self-regulatory organization must, on the same day that event takes place, give electronic notice of that event to the Commission at its Washington, DC, headquarters and send a copy of that notification to such futures commission merchant, retail foreign exchange dealer, or introducing broker.

(l) Nothing in this section shall preclude the Commission from examining any futures commission merchant, retail foreign exchange dealer, or introducing broker for compliance with the minimum financial and related reporting requirements, and the risk management requirements, as applicable, to which such futures commission merchant, retail foreign exchange dealer, or introducing broker is subject.

(m) In the event a plan is not filed and/or approved for each registered futures commission merchant, retail foreign exchange dealer, or introducing broker that is a member of more than one self-regulatory organization, the Commission may design and, after notice and opportunity for comment, approve a plan for those futures commission merchants, retail foreign exchange dealers, or introducing brokers that are not the subject of an approved plan (under paragraph (h) of this section), delegating to a designated self-regulatory organization the responsibilities described in paragraph (d) of this section.

18. Amend § 1.55 by revising paragraphs (b)(2) through (8) and by adding paragraphs (b)(9) through (14), (i), (j), (k), (l), (m), (n), and (o), to read as follows:

§ 1.55 Public disclosures by futures commission merchants

* * * * *

(b) * * *

(2) The funds you deposit with a futures commission merchant for trading futures positions are not protected by insurance in the event of the bankruptcy or insolvency of the futures commission merchant, or in the event your funds are misappropriated due to fraud.

(3) The funds you deposit with a futures commission merchant for trading futures positions are not protected by the Securities Investor Protection Corporation even if the futures commission merchant is registered with the Securities and Exchange Commission as a broker or dealer.

(4) The funds you deposit with a futures commission merchant are not guaranteed or insured by a derivatives clearing organization in the event of the bankruptcy or insolvency of the futures commission merchant, or if the futures commission merchant is otherwise unable to refund your funds.

(5) The funds you deposit with a futures commission merchant are not held by the futures commission

merchant in a separate account for your individual benefit. Futures commission merchants commingle the funds received from customers in one or more accounts and you may be exposed to losses incurred by other customers if the futures commission merchant does not have sufficient capital to cover such other customers' trading losses.

(6) The funds you deposit with a futures commission merchant may be invested by the futures commission merchant in certain types of financial instruments that have been approved by the Commission for the purpose of such investments. Permitted investments are listed in Commission Regulation 1.25 and include: U.S. government securities; municipal securities; money market mutual funds; and certain corporate notes and bonds. The futures commission merchant may retain the interest and other earnings realized from its investment of customer funds. You should be familiar with the types of financial instruments that a futures commission merchant may invest customer funds in.

(7) Futures commission merchants are permitted to deposit customer funds with affiliated entities, such as affiliated banks, securities brokers or dealers, or foreign brokers. You should inquire as to whether your futures commission merchant deposits funds with affiliates and assess whether such deposits by the futures commission merchant with its affiliates increases the risks to your funds.

(8) You should consult your futures commission merchant concerning the nature of the protections available to safeguard funds or property deposited for your account.

(9) Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit (''limit move'').

(10) All futures positions involve risk, and a ''spread'' position may not be less risky than an outright ''long'' or ''short'' position.

(11) The high degree of leverage (gearing) that is often obtainable in futures trading because of the small margin requirements can work against you as well as for you. Leverage (gearing) can lead to large losses as well as gains.

(12) In addition to the risks noted in the paragraphs enumerated above, you should be familiar with the futures commission merchant you select to entrust your funds for trading futures positions. The Commodity Futures Trading Commission requires each futures commission merchant to make publicly available on its Web site firm specific disclosures and financial information to assist you with your assessment and selection of a futures commission merchant. Information regarding this futures commission merchant may be obtained by visiting our Web site, *www.[Web site address].*

ALL OF THE POINTS NOTED ABOVE APPLY TO ALL FUTURES TRADING WHETHER FOREIGN OR DOMESTIC. IN ADDITION, IF YOU ARE CONTEMPLATING TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS, YOU SHOULD BE AWARE OF THE FOLLOWING ADDITIONAL RISKS:

(13) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally ''linked'' to a domestic exchange, whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery, and clearing of transactions on such an exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use domestic alternative dispute resolution procedures. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

(14) Finally, you should be aware that the price of any foreign futures or option contract and, therefore, the potential profit and loss resulting therefrom, may be affected by any fluctuation in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign option contract is liquidated or exercised.

THIS BRIEF STATEMENT CANNOT, OF COURSE, DISCLOSE ALL THE RISKS AND OTHER ASPECTS OF THE COMMODITY MARKETS

I hereby acknowledge that I have received and understood this risk disclosure statement.

_____

Date

_____

Signature of Customer

* * * * *

(i) Notwithstanding any other provision of this section, no futures commission merchant may enter into a customer account agreement or first accept funds from a customer, unless the futures commission merchant discloses to the customer all information about the futures commission merchant, including its business, operations, risk profile, and affiliates, that would be material to the customer's decision to entrust such funds to and otherwise do business with the futures commission merchant and that is otherwise necessary for full and fair disclosure. In connection with the disclosure of such information, the futures commission merchant shall provide material information about the topics described in paragraph (k) of this section, expanding upon such information as necessary to keep such disclosure from being misleading, whether through omission or otherwise. The futures commission merchant shall also disclose the same information required by this paragraph to all customers existing on the effective date of this paragraph even if the futures commission merchant and such existing customers have previously entered into a customer account agreement or the futures commission merchant has already accepted funds from such existing customers. The futures commission merchant shall update the information required by this section as and when necessary, but at least annually, to keep such information accurate and complete and shall promptly disclose such updated information to all of its customers. In connection with such obligation to update information, the futures commission merchant shall take into account any material change to its business operation, financial condition and other factors material to the customer's decision to entrust the customer's funds and otherwise do business with the futures commission merchant since its most recent disclosure pursuant to this paragraph, and for this purpose shall without limitation consider events that require periodic reporting required to be filed pursuant to § 1.12 of this part. For purposes of this section, the disclosures required pursuant to this paragraph (i) will be referred to as the ''Disclosure Documents.'' The Disclosure Documents shall provide a detailed table of contents referencing and describing the Disclosure Documents.

(j)(1) Each futures commission merchant shall make the Disclosure Documents available to each customer to whom disclosure is required pursuant to paragraph (i) of this section (for purposes of this section, its ''FCM Customers'') and to the general public.

(2) A futures commission merchant shall make the Disclosure Documents available to FCM Customers and to the general public by posting a copy of the Disclosure Documents on the futures commission merchant's Web site. A futures commission merchant, *however,* may use an electronic means other than its Web site to make the Disclosure Documents available to its FCM Customers; *provided* that:

(i) The electronic version of the Disclosure Documents shall be presented in a format that is readily communicated to the FCM Customers. Information is readily communicated to the FCM Customers if it is accessible to the ordinary computer user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information; and

(ii) A complete paper copy of the Disclosure Documents shall be provided to an FCM Customer upon request.

(k) *Specific Topics.* The futures commission merchant shall provide material information about the following specific topics:

(1) The futures commission merchant's name, address of its principal place of business, phone number, fax number, and email address;

(2) The names and business addresses of the futures commission merchant's directors and senior management, including titles, business background, areas of responsibility, and the nature of duties of each;

(3) The significant types of business activities and product lines engaged in by the futures commission merchant, and the approximate percentage of the futures commission merchant's assets and capital that are used in each type of activity;

(4) The futures commission merchant's business on behalf of its customers, including types of accounts, markets traded, international businesses, and clearinghouses and carrying brokers used, and the futures commission merchant's policies and procedures concerning the choice of bank depositories, custodians, and other counterparties;

(5) The material risks, accompanied by an explanation of how such risks may be material to its customers, of entrusting funds to the futures commission merchant, including, without limitation, the nature of investments made by the futures commission merchant (including credit quality, weighted average maturity, and weighted average coupon); the futures commission merchant's creditworthiness, leverage, capital, liquidity, principal liabilities, balance sheet leverage and other lines of business; risks to the futures commission merchant created by its affiliates and their activities, including investment of customer funds in an affiliated entity; and any significant liabilities, contingent or otherwise, and material commitments;

(6) The name of the futures commission merchant's designated self-regulatory organization and its Web site address and the location where the annual audited financial statements of the futures commission merchant is made available;

(7) Any material administrative, civil, enforcement, or criminal action then pending, and any enforcement actions taken in last three years;

(8) A basic overview of customer fund segregation, futures commission merchant collateral management and investments, futures commission merchants, and joint futures commission merchant/broker dealers;

(9) Information on how a customer may obtain information regarding filing a complaint about the futures commission merchant with the Commission or with the firm's designated self-regulatory organization: and

(10) The following financial data as of the most recent month-end when the Disclosure Document is prepared:

(i) The futures commission merchant's total equity, regulatory capital, and net worth, all computed in accordance with U.S. Generally Accepted Accounting Principles and § 1.17 of this part, as applicable;

(ii) The dollar value of the futures commission merchant's proprietary margin requirements as a percentage of the aggregate margin requirement for futures customers, Cleared Swaps Customers, and 30.7 Customers;

(iii) The number of futures customers, Cleared Swaps Customers, and 30.7 Customers that comprise 50 percent of the futures commission merchant's total funds held for futures customers, Cleared Swaps Customers, and 30.7 Customers, respectively;

(iv) The aggregate notional value, by asset class, of all non-hedged, principal over-the-counter transactions into which the futures commission merchant has entered;

(v) The amount, generic source and purpose of any unsecured lines of credit (or similar short-term funding) the futures commission merchant has obtained but not yet drawn upon;

(vi) The aggregated amount of financing the futures commission merchant provides for customer transactions involving illiquid financial products for which it is difficult to obtain timely and accurate prices; and

(vii) The percentage of futures customer, Cleared Swaps Customer, and 30.7 Customer receivable balances that the futures commission merchant had to write-off as uncollectable during the past 12-month period, as compared to the current balance of funds held for futures customers, Cleared Swaps Customers, and 30.7 Customers; and

(11) A summary of the futures commission merchant's current risk practices, controls and procedures.

(l) In addition to the foregoing, each futures commission merchant shall adopt policies and procedures reasonably designed to ensure that advertising and solicitation activities by each such futures commission merchant and any introducing brokers associated with such futures commission merchant are not misleading to its FCM Customers in connection with their decision to entrust funds to and otherwise do business with such futures commission merchant.

(m) The Disclosure Document required by paragraph (i) of this section is in addition to the Risk Disclosure Statement required under paragraph (a) of this section.

(n) All Disclosure Documents, with each Disclosure Document dated the date of first use, shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of its designated self-regulatory organization, representatives of the Commission, and representatives of applicable prudential regulators.

(o)(1) Each futures commission merchant shall make the following financial information publicly available on its Web site:

(i) The daily Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges for the most current 12-month period;

(ii) The daily Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7 for the most current 12-month period;

(iii) The daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared

Swaps Customer Accounts Under Section 4d(f) of the Act for the most current 12-month period;

(iv) A summary schedule of the futures commission merchant's adjusted net capital, net capital, and excess net capital, all computed in accordance with § 1.17 of this part and reflecting balances as of the month-end for the 12 most recent months; and

(v) The Statement of Financial Condition, the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Exchanges, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers Pursuant to Commission Regulation 30.7, the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under Section 4d(f) of the Act, an all related footnotes to the above schedules that are part of the futures commission merchant's most current certified annual report pursuant to § 1.16 of this part.

(2) Each futures commission merchant must include a statement on its Web site that is available to the public that financial information regarding the futures commission merchant, including how the futures commission merchant invests and holds customer funds, may be obtained from the National Futures Association and include a link to the Web site of the National Futures Association's Basic System where information regarding the futures commission merchant's investment of customer funds is maintained.

(3) Each futures commission merchant must include a statement on its Web site that is available to the public that additional financial information on all futures commission merchants is available from the Commodity Futures Trading Commission, and include a link to the Commodity Futures Trading Commission's web page for financial data for futures commission merchants.

PART 3—REGISTRATION

19. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

20. Amend § 3.3 by revising paragraph (f)(2) to read as follows:

§ 3.3 Chief compliance officer.

* * * * *

(f) * * *

(2) The annual report shall be furnished electronically to the Commission not more than 60 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant, simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii) of this chapter, simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h) of this chapter, or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

* * * * *

PART 22—CLEARED SWAPS

21. The authority citation for part 22 continues to read as follows:

Authority: 7 U.S.C. 1a, 6d, 7a–1 as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

22. Amend § 22.2 by revising paragraphs (d)(1), (e)(1), (f)(2), (f)(4), (f)(5)(iii)(B), and (g)(2), and by adding paragraphs (f)(6) and (g)(3) through (10) to read as follows:

§ 22.2 Futures Commission Merchants: Treatment of Cleared Swaps and Associated Cleared Swap Customer Collateral.

* * * * *

(d) *Limitations on use.* (1) No futures commission merchant shall use, or permit the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps or any other trade or contract of, or to secure or extend the credit of, any person other than such Cleared Swaps Customer. Cleared Swaps Customer Collateral shall not be used to margin, guarantee, or secure trades or contracts of the entity constituting a Cleared Swaps Customer other than in Cleared Swaps, except to the extent permitted by a Commission rule, regulation or order. For this purpose, a futures commission merchant which operationally commingles the funds of its Cleared Swaps Customers must ensure that at all times its residual interest in Cleared Swaps Customer Accounts exceeds the sum of the margin deficits of all of its Cleared Swaps Customers.

* * * * *

(e) * * *

(1) *Permitted investments.* A futures commission merchant may invest money, securities, or other property constituting Cleared Swaps Customer Collateral in accordance with § 1.25 of this chapter, which shall apply to such money, securities, or other property as if they comprised customer funds or customer money subject to segregation pursuant to section 4d(a) of the Act and the regulations thereunder; *Provided, however,* that the futures commission merchant shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to Cleared Swaps Customers of the futures commission merchant.

* * * * *

(f) * * *

(2) The futures commission merchant must reflect in the account that it maintains for each Cleared Swaps Customer the market value of any Cleared Swaps Customer Collateral that it receives from such customer, as adjusted by:

(i) Any uses permitted under § 22.2(d) of this part;

(ii) Any accruals on permitted investments of such collateral under § 22.2(e) of this part that, pursuant to the futures commission merchant's customer agreement with that customer, are creditable to such customer;

(iii) Any gains and losses with respect to Cleared Swaps;

(iv) Any charges lawfully accruing to the Cleared Swaps Customer, including any commission, brokerage fee, interest, tax, or storage fee; and

(v) Any appropriately authorized distribution or transfer of such collateral.

* * * * *

(4) The futures commission merchant must, at all times, maintain in segregation, in its FCM Physical Locations and/or its Cleared Swaps Customer Accounts at Permitted Depositories, an amount equal to the sum of any credit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts, excluding from such sum any debit balances that the Cleared Swaps Customers of the futures commission merchant have in their accounts.

(5) * * *

(iii) * * *

(B) Reduce such market value by applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (§ 240.15c3–1(c)(2)(vi) of this title). Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule

240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The portion of the debit balance, not exceeding 100 percent, that is secured by the reduced market value of such readily marketable securities shall be included in calculating the sum referred to in paragraph (f)(4) of this section.

(6) The FCM must reflect in the account it maintains for each Cleared Swaps Customer the amount of collateral required for the Cleared Swaps Customer's Cleared Swaps at each derivatives clearing organization on which the futures commission merchant is a member, or by each other futures commission merchant through which the futures commission merchant clears Cleared Swaps, and the total of such required collateral amounts. If the value of the Cleared Swaps Customer Collateral, as calculated in this section, for a Cleared Swaps Customer is less than the total amount of collateral required for that Cleared Swaps Customer's Cleared Swaps at such derivatives clearing organizations and such other futures commission merchants, the difference is a margin deficit. The futures commission merchant must at all times maintain a residual interest in Cleared Swaps Customer Accounts sufficient to exceed the sum of all margin deficits that Cleared Swaps Customers of the futures commission merchant have in their accounts. Such residual interest may not be withdrawn pursuant to any provision of this chapter.

(g) * * *

(2) Each futures commission merchant is required to document its segregation computation required by paragraph (g)(1) of this section by preparing a Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA contained in the Form 1–FR–FCM as of the close of business each business day.

(3) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2) of this section by noon the following business day.

(4) Each futures commission merchant shall file the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts Under 4d(f) of the CEA required by paragraph (g)(2) of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(5) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing of the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, or any other depository or custodian holding Cleared Swaps Customer Collateral as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(i) The name and location of each entity holding Cleared Swaps Customer Collateral;

(ii) The total amount of Cleared Swaps Customer Collateral held by each entity listed in this paragraph (g)(5); and

(iii) The total amount of cash and investments that each entity listed in this paragraph (g)(5) holds for the futures commission merchant. The futures commission merchant must report the following investments:

(A) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(B) General obligations of any State or of any political subdivision of a State (municipal securities);

(C) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(D) Certificates of deposit issued by a bank;

(E) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(F) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(G) Interests in money market mutual funds.

(6) Each futures commission merchant must report the total amount of customer owned securities held by the futures commission merchant as Cleared Swaps Customer Collateral and must list the names and locations of the depositories holding customer owned securities.

(7) Each futures commission merchant must report the total amount of Cleared Swaps Customer Collateral that has been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(8) Each futures commission merchant must report which, if any, of the depositories holding Cleared Swaps Customer Collateral under paragraph (g)(5) of this section are affiliated with the futures commission merchant.

(9) Each futures commission merchant shall file the detailed list of depositories required by paragraph (g)(5) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(10) Each futures commission merchant shall retain its daily segregation computation and the Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under section 4d(f) of the CEA required by paragraph (g)(2) of this section and the detailed listing of depositories required by paragraph (g)(5) of this section, together with all supporting documentation, in accordance with § 1.31 of this chapter.

23. Add § 22.17 to read as follows:

§ 22.17 Policies and procedures governing disbursements of Cleared Swaps Customer Collateral from Cleared Swaps Customer Accounts.

(a) The provision in section 4d(f)(2) of the Act that prohibits the commingling of Cleared Swaps Customer Collateral with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the funds segregated as required by the Act and the regulations in this part and set apart for the benefit of Cleared Swaps Customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such segregated funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this chapter, as it may deem necessary to ensure any and all Cleared Swaps Customer Accounts are not undersegregated at any time.

(b) A futures commission merchant may not withdraw funds on any business day for its own proprietary use from a Cleared Swaps Customer Account unless the futures commission merchant has prepared the daily segregation calculation required by § 22.2 of this part as of the close of business on the previous business day.

A futures commission merchant that has completed its daily segregation calculation may make withdrawals for its own use, to the extent of its actual residual financial interest in funds held in segregated accounts, including the withdrawal of securities held in segregated safekeeping accounts held by a bank, trust company, derivatives clearing organization or other futures commission merchant. Such withdrawal(s) shall not result in the funds of one Cleared Swaps Customer being used to purchase, margin or carry the trades, contracts or swaps positions, or extend the credit of any other Cleared Swaps Customer or other person. Notwithstanding any other provision of this chapter, a futures commission merchant must at all times maintain an amount of residual interest in Cleared Swaps Customer Accounts for the benefit of Cleared Swaps Customers that exceeds the sum of all Cleared Swaps Customers' margin deficits and such residual interest may not be withdrawn by the futures commission merchant.

(c) A futures commission merchant may not withdraw funds for its own proprietary use, in a single transaction or a series of transactions on a given business day, from Cleared Swaps Customer Accounts if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily segregation calculation required by § 22.2 of this part and computed as of the close of business on the previous business day, unless:

(1) The futures commission merchant's Chief Executive Officer, Chief Finance Officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals;

(2) The futures commission merchant files written notice of the withdrawal or series of withdrawals, with the Commission and with its designated self-regulatory organization immediately after the Chief Executive Officer, Chief Finance Officer or other senior official pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the Chief Executive Officer, Chief Finance Officer or other senior official that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in such accounts holding Cleared Swaps Customer Accounts funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and the name of each recipient;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the swaps customer funds after the withdrawal;

(v) Contain a representation by the Chief Executive Officer, Chief Finance Officer or other senior official that pre-approved the withdrawal, or series of withdrawals, that, after due diligence, to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the segregation requirements after the withdrawal. The Chief Executive Officer, Chief Finance Officer or other senior official must consider the daily segregation calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the Cleared Swaps Customer Accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of Commission which has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice; and

(3) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (2) of this section, and before the next daily segregated funds calculation, no futures commission merchant may make any further withdrawals from accounts holding Cleared Swaps Customer Account funds, except to or for the benefit of Cleared Swaps Customers, without complying with paragraph (c)(1) of this section and filing a written notice with the Commission under (c)(2)(vi) of this section and its designated self-regulatory organization signed by the Chief Executive Officer, Chief Finance Officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the Chief Executive Officer, Chief Finance Officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the segregated accounts holding Cleared Swaps Customer Account funds after the withdrawal; and

(v) Include a representation that to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the segregation requirements after the withdrawal.

(d) If a futures commission merchant withdraws funds from Cleared Swaps Customer Accounts for its own proprietary use, and the withdrawal causes the futures commission merchant to not hold sufficient funds in Cleared Swaps Customer Accounts to meet its targeted residual interest, as required to be computed under § 1.11 of this chapter, the futures commission merchant must deposit its own funds into the Cleared Swaps Customer Accounts to restore the targeted amount of residual interest on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11 of this chapter. Notwithstanding the foregoing, if at any time the futures commission merchant's residual interest in Cleared Swaps Customer Accounts is less than the sum of its Cleared Swaps Customers' margin deficits, the futures commission merchant must immediately restore the residual interest to exceed the sum of such margin deficits. Any proprietary funds deposited in Cleared Swaps Customer Accounts must be unencumbered and otherwise compliant with § 1.25 of this chapter, as applicable.

(e) Notwithstanding any other provision of this part, a futures commission merchant may not withdraw funds for its own proprietary use from a Cleared Swaps Customer Account unless the futures commission merchant follows its policies and procedures required by § 1.11 of this chapter.

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

24. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c, and 12a, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (Jul. 21, 2010).

25. Amend § 30.1 by adding paragraphs (f), (g), and (h) to read as follows:

§ 30.1 Definitions.

* * * * *

(f) *30.7 Customer* means any foreign futures or foreign options customer as defined in paragraph (c) of this section as well as any foreign-domiciled person who trades in foreign futures or foreign options through a futures commission merchant; *Provided, however,* that an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a 30.7 customer.

(g) *30.7 Account* means any account maintained by a futures commission merchant for or on behalf of 30.7 Customers to hold money, securities, or other property to margin, guarantee, or secure foreign futures or foreign option positions.

(h) *30.7 Customer Funds* means any money, securities, or other property received by a futures commission merchant from, for, or on behalf of 30.7 Customers to margin, guarantee, or secure foreign futures or foreign option positions, or money, securities, or other property accruing to 30.7 Customers as a result of foreign futures and foreign option positions.

26. Revise § 30.7 to read as follows:

§ 30.7 Treatment of foreign futures or foreign options secured amount.

(a) *General.* Except as provided in this section, a futures commission merchant must at all times maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its obligations to 30.7 Customers denominated as the foreign futures or foreign options secured amount. In computing the foreign futures or foreign options secured amount, a futures commission merchant may offset any net deficit in a particular 30.7 Customer's Account against the current market value of readily marketable securities held for the same particular 30.7 Customer's Account as provided for in paragraph (l) of this section. The amount that must be deposited in such separate account or accounts for 30.7 Customers must be no less than the amount required to be held in a separate account or accounts for or on behalf of 30.7 Customers pursuant to any law, or rule, regulation or order thereunder, or any rule of any self-regulatory organization authorized thereunder, in the jurisdiction in which the depository or the 30.7 Customer, as appropriate, is located. In addition, the futures commission merchant must at all times maintain residual interest in separate accounts for 30.7 Customers sufficient to exceed the sum of all margin deficits that the 30.7 Customers of the futures commission merchant have in their 30.7 Accounts. Such residual interest may not be withdrawn pursuant to any provision of this section. If the value of a 30.7 Customer's Funds for a 30.7 Account is less than the total amount of collateral required for that 30.7 Customer's 30.7 Account for foreign futures or foreign options, the difference is a margin deficit.

(b) *Location of 30.7 Customer Funds.* A futures commission merchant shall deposit the foreign futures or foreign options secured amount under an account name that clearly identifies the funds as belonging to 30.7 Customers and shows that the foreign futures or foreign options secured amount is set aside as required by this part. A futures commission merchant may deposit funds set aside as the foreign futures or foreign options secured amount with the following depositories:

(1) A bank or trust company located in the United States;

(2) A bank or trust company located outside the United States that has in excess of $1 billion of regulatory capital;

(3) A futures commission merchant registered as such with the Commission;

(4) A derivatives clearing organization;

(5) The clearing organization of any foreign board of trade;

(6) A member of any foreign board of trade; or

(7) Such member's or clearing organization's designated depositories.

(c) *Limitation on holding foreign futures or foreign options secured amount outside of the United States.* A futures commission merchant may not deposit or hold the foreign futures or foreign options secured amount in accounts maintained outside of the United States with any of the depositories listed in paragraph (b) of this section except to meet margin requirements, including prefunding margin requirements, established by rule, regulation, or order of foreign boards of trade or foreign clearing organizations, or to meet margin calls issued by foreign brokers carrying the 30.7 Customers' foreign futures and foreign option positions; *Provided, however,* that a futures commission merchant may deposit an additional amount of up to 10 percent of the total amount of funds necessary to meet margin and prefunding margin requirements to avoid daily transfers of funds between the futures commission merchant's 30.7 Accounts maintained in the United States and those maintained outside of the United States. An FCM must deposit 30.7 Customer Funds under the laws and regulations of the foreign jurisdiction that provide the greatest degree of protection to such funds. An FCM may not by contract or otherwise waive any of the protections afforded customer funds under the laws of the foreign jurisdiction.

(d) *Written acknowledgment from depositories.* (1) Each futures commission merchant must obtain a written acknowledgment from each depository as set out in Appendix E to this part in accordance with the requirements of this part; *Provided, however,* that an acknowledgment need not be obtained from a derivatives clearing organization that has adopted and submitted to the Commission rules that provide for the separate holding of the foreign futures or foreign options secured amount, in accordance with all relevant provisions of the Act, this part and the regulations and orders promulgated thereunder, of all funds held on behalf of 30.7 Customers and all instruments purchased with funds set aside as the foreign futures or foreign options secured amount as provided for under paragraph (i) of this section.

(2) The written acknowledgment must be in the form as set out in Appendix E to this part: *Provided, however,* that if the futures commission merchant invests funds set aside as the foreign futures or foreign options secured amount in money market mutual funds as a permitted investment under paragraph (i) of this section and in accordance with the terms and conditions of § 1.25(c) of this chapter, the written acknowledgment with respect to such investment must be in the form as set out in Appendix F to this part.

(3) A futures commission merchant may deposit 30.7 Customer Funds only with a depository that provides the Commission and the futures commission merchant's designated self-regulatory organization with direct, read-only access to account information on 24-hour a day basis. The Commission and the futures commission merchant's designated self-regulatory organization must receive the direct access when the account is opened. The written acknowledgment must contain the

futures commission merchant's authorization to the depository to provide direct and immediate account access to the Commission and the futures commission merchant's designated self-regulatory organization.

(4) A futures commission merchant may deposit 30.7 Customer Funds only with a depository that agrees to provide the Commission and the futures commission merchant's designated self-regulatory organization with a copy of the executed written acknowledgment within three business days of the opening of the account. The Commission must receive the written acknowledgment from the depository via electronic mail at *acknowledgmentletters@cftc.gov.* The written acknowledgment must contain the futures commission merchant's authorization to the depository to provide the written acknowledgment to the Commission and to the futures commission merchant's designated self-regulatory organization without further notice to or consent from the futures commission merchant.

(5) A futures commission merchant may deposit 30.7 Customer Funds only with a depository that agrees to reply promptly and directly to the Commission's or to the futures commission merchant's designated self-regulatory organization's requests for confirmation of account balances or other account information without further notice to or consent from the futures commission merchant. The written acknowledgment must contain the futures commission merchant's authorization to the depository to respond directly and immediately to requests from the Commission or the futures commission merchant's designated self-regulatory organization for confirmation of account balances and other account information without further notice to or consent from the futures commission merchant.

(6) The futures commission merchant shall promptly file a copy of the written acknowledgment with the Commission in the manner specified by the Commission and in no event later than the later of:

(i) The effective date of this rule; or

(ii) Three business days after the account is opened.

(7) The futures commission merchant shall amend the written acknowledgment and promptly file the amended written acknowledgment with the Commission within 120 days of any changes in the following:

(i) The name or business address of the futures commission merchant;

(ii) The name or business address of the depository; or

(iii) The account number(s) under which the foreign futures or foreign options secured amount are held.

(8) Each futures commission merchant must maintain each written acknowledgment readily accessible in its files in accordance with § 1.31 of this chapter, for as long as the account remains open, and thereafter for the period provided in § 1.31 of this chapter.

(e) *Commingling.* (1) A futures commission merchant may commingle the funds set aside as the foreign futures or foreign options secured amount that it receives from, or on behalf of, multiple 30.7 Customers in a single account or multiple accounts with one or more of the depositories listed in paragraph (b) of this section.

(2) A futures commission merchant may not commingle the funds set aside as the foreign futures or foreign options secured amount held for 30.7 Customers with the money, securities or property of such futures commission merchant, with any proprietary account of such futures commission merchant, or use such funds to secure or guarantee the obligations of, or extend credit to, such futures commission merchant or any proprietary account of such futures commission merchant; *Provided, however,* a futures commission merchant may deposit proprietary funds into 30.7 Customer Accounts as permitted under paragraph (g) of this section.

(3) A futures commission merchant may not commingle funds held for 30.7 Customers with funds deposited by futures customers as defined in § 1.3 of this chapter and held in account segregated pursuant to Section 4d(a) and 4d(b) of the Act or with funds deposited by Cleared Swap Customers as defined under § 22.1 of this chapter and held in segregated accounts pursuant to Section 4d(f) of the Act, or with funds of any account holders of the futures commission merchant unrelated to trading foreign futures or foreign options; *Provided, however,* that a futures commission merchant may commingle 30.7 Customer funds with funds deposited by futures customers or Cleared Swaps Customers pursuant to the terms of a Commission regulation or order authorizing such commingling.

(f) *Limitations on use of 30.7 Customer Funds.* (1) A futures commission merchant shall not use, or permit the use of, the funds of one 30.7 Customer to purchase, margin or settle the trades, contracts, or commodity options of, or to secure or extend credit to, any person other than such 30.7 Customer. This prohibition on the use of the funds of one 30.7 customer to extend credit to, or to purchase, margin or settle the trades, contracts, or commodity options of another 30.7 Customer applies at all times. For this purpose, a futures commission merchant which operationally commingles the funds of its 30.7 Customers must ensure that at all times its residual interest in funds set aside as the foreign futures or foreign options secured amount exceeds the sum of all its 30.7 Customers' margin deficits.

(2) A futures commission merchant may not impose or permit the imposition of a lien on any funds set aside as the foreign futures or foreign options secured amount, including any residual financial interest of the futures commission merchant in such funds.

(3) A futures commission merchant may not include in funds set aside as the foreign futures or foreign options secured amount any money invested in securities, memberships, or obligations of any clearing organization or board of trade. A futures commission merchant may not include in funds set aside as the foreign futures or foreign options secured amount any other money, securities, or property held by a member of a foreign board of trade, board of trade, or clearing organization, except if the funds are deposited to margin, secure, or guarantee 30.7 Customers' foreign futures or foreign options positions and the futures commission merchant obtains the written acknowledgment from the member of the foreign board of trade, board of trade, or clearing organization as required by paragraph (d) of this section.

(g) *Futures commission merchant's residual financial interest and withdrawal of funds.* (1) The provision in paragraph (e) of this section, which prohibits the commingling of funds set aside as the foreign futures or foreign options secured amount with the funds of a futures commission merchant, shall not be construed to prevent a futures commission merchant from having a residual financial interest in the funds set aside as required by the regulations in this part for the benefit of 30.7 Customers; nor shall such provisions be construed to prevent a futures commission merchant from adding to such set aside funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type set forth in § 1.25 of this chapter, as it may deem necessary to ensure any and all 30.7 Accounts from becoming undersecured at any time.

(2) A futures commission merchant may not withdraw funds on any business day for its own proprietary use

from an account or accounts holding the foreign futures and foreign options secured amount unless the futures commission merchant has prepared the daily 30.7 calculation required by paragraph (l) of this section as of the close of business on the previous business day. A futures commission merchant that has completed its daily 30.7 calculation may make withdrawals to its own order, to the extent of its actual residual financial interest in funds held in 30.7 Accounts, including the withdrawal of securities held in secured amount safekeeping accounts held by a bank, trust company, contract market, clearing organization, member of a foreign board of trade, or other futures commission merchant. Such withdrawal(s) shall not result in the funds of one 30.7 Customer being used to purchase, margin or carry the foreign futures or foreign options positions, or extend the credit of any other 30.7 Customer or other person. Notwithstanding any other provision of this section, a futures commission merchant must at all times maintain an amount of residual interest in separate accounts for the benefit of 30.7 Customers that exceeds the sum of all 30.7 Customers' margin deficits and such residual interest may not be withdrawn by the futures commission merchant.

(3) A futures commission merchant may not withdraw funds for its own proprietary use, in a single transaction or a series of transactions on a given business day, from an account or accounts holding 30.7 Customer Funds if such withdrawal(s) would exceed 25 percent of the futures commission merchant's residual interest in such accounts as reported on the daily secured amount calculation required by paragraph (l) of this section and computed as of the close of business on the previous business day, unless the futures commission merchant's Chief Executive Officer, Chief Finance Officer or other senior official that is listed as a principal of the futures commission merchant on its Form 7–R and is knowledgeable about the futures commission merchant's financial requirements and financial position pre-approves in writing the withdrawal, or series of withdrawals.

(4) A futures commission merchant must file written notice of the withdrawal or series of withdrawals that exceed 25 percent of the futures commission merchant's residual interest in 30.7 Customer Funds as computed under paragraph (h)(2) of this section with the Commission and with its designated self-regulatory organization immediately after the Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (g)(2) of this section pre-approves the withdrawal or series of withdrawals. The written notice must:

(i) Be signed by the Chief Executive Officer, Chief Finance Officer or other senior official that pre-approved the withdrawal, and give notice that the futures commission merchant has withdrawn or intends to withdraw more than 25 percent of its residual interest in accounts holding 30.7 Customer Funds;

(ii) Include a description of the reasons for the withdrawal or series of withdrawals;

(iii) List the amount of funds provided to each recipient and the name of each recipient;

(iv) Include the current estimate of the amount of the futures commission merchant's residual interest in the 30.7 Customer Funds after the withdrawal;

(v) Contain a representation by the Chief Executive Officer, Chief Finance Officer or other senior official as described in paragraph (g)(3) of this section that pre-approved the withdrawal, or series of withdrawals, that to such person's knowledge and reasonable belief, the futures commission merchant remains in compliance with the secured amount requirements after the withdrawal. The Chief Executive Officer, Chief Finance Officer or other appropriate senior official as described in paragraph (g)(2) of this section must consider the daily 30.7 calculation as of the close of business on the previous business day and any other factors that may cause a material change in the futures commission's residual interest since the close of business the previous business day, including known unsecured customer debits or deficits, current day market activity and any other withdrawals made from the 30.7 Customer Accounts; and

(vi) Any such written notice filed with the Commission must be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer. Any written notice filed must be followed up with direct communication to the Regional office of Commission which has supervisory authority over the futures commission merchant whereby the Commission acknowledges receipt of the notice.

(5) After making a withdrawal requiring the approval and notice required in paragraphs (c)(1) and (2) of this section, and before the next daily secured amount calculation, no futures commission merchant may make any further withdrawals from accounts holding 30.7 Customer Funds, except to or for the benefit of 30.7 Customers, without, for each withdrawal, obtaining the approval required under paragraph (c)(1) of this section and filing a written notice with the Commission under paragraph (g)(4)(vi) of this section and its designated self-regulatory organization signed by the Chief Executive Officer, Chief Finance Officer, or other senior official. The written notice must:

(i) List the amount of funds provided to each recipient and each recipient's name;

(ii) Disclose the reason for each withdrawal;

(iii) Confirm that the Chief Executive Officer, Chief Finance Officer, or other senior official (and identify of the person if different from the person who signed the notice) pre-approved the withdrawal in writing;

(iv) Disclose the current estimate of the futures commission merchant's remaining total residual interest in the secured accounts holding 30.7 Customer Funds after the withdrawal; and

(v) Include a representation that to the best of the notice signatory's knowledge and reasonable belief the futures commission merchant remains in compliance with the secured amount requirements after the withdrawal.

(6) If a futures commission merchant withdraws funds from the separate accounts holding 30.7 Customer Funds for its own proprietary use, and the withdrawal causes the futures commission merchant to not hold sufficient funds in the separate accounts for the benefit of the 30.7 Customers to meet its targeted residual interest, as required to be computed under § 1.11 of this chapter, the futures commission merchant must deposit its own funds into the separate accounts for the benefit of 30.7 Customers to restore the account balance to the targeted residual interest amount on the next business day, or, if appropriate, revise the futures commission merchant's targeted amount of residual interest pursuant to the policies and procedures required by § 1.11 of this chapter. Notwithstanding the foregoing, if at any time the futures commission merchant's residual interest in separate accounts for the benefit of 30.7 Customers is less than the sum of

its 30.7 Customer's margin deficits, the futures commission merchant must immediately restore the residual interest to exceed the sum of such margin deficits. Any proprietary funds deposited in the 30.7 Customer Accounts must be unencumbered and otherwise compliant with § 1.25 of this section, as applicable.

(7) Notwithstanding any other provision of this part, a futures commission merchant may not withdraw funds for its own proprietary use from 30.7 Accounts unless the futures commission merchant follows its policies and procedures required by § 1.11 of this chapter.

(h) *Permitted investments and deposits of 30.7 Customer Funds.* (1) A futures commission merchant may invest 30.7 Customer Funds subject to, and in compliance with, the terms and conditions of § 1.25 of this chapter. Regulation 1.25 of this chapter shall apply to the investment of 30.7 Customer Funds as if such funds comprised customer funds or customer money subject to segregation pursuant to section 4d of the Act and the regulations thereunder.

(2) Each futures commission merchant that invests money, securities or property on behalf of 30.7 Customers must keep a record showing the following:

(i) The date on which such investments were made;

(ii) The name of the person through whom such investments were made;

(iii) The amount of money or current market value of securities so invested;

(iv) A description of the obligations in which such investments were made, including CUSIP or ISIN numbers;

(v) The identity of the depositories or other places where such investments are maintained;

(vi) The date on which such investments were liquidated or otherwise disposed of and the amount of money received or current market value of securities received as a result of such disposition;

(vii) The name of the person to or through whom such investments were disposed of; and

(viii) A daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable third parties to verify the valuations and the accuracy of any information from external sources used in those valuations.

(3) Any 30.7 Customer Funds deposited in a bank or trust company located in the United States or in a foreign jurisdiction must be available for immediate withdrawal upon the demand of the futures commission merchant.

(4) Futures commission merchants that invest 30.7 Customer Funds in instruments described in § 1.25 of this chapter shall include such instruments in the computation of its secured amount requirements, required under paragraph (l) of this section, at values that at no time exceed current market value, determined as of the close of the market on the date for which such computation is made.

(i) *Responsibility for § 1.25 investment losses.* A futures commission merchant shall bear sole financial responsibility for any losses resulting from the investment of 30.7 Customer Funds in instruments described in § 1.25 of this chapter. No investment losses shall be borne or otherwise allocated to the 30.7 Customers of the futures commission merchant.

(j) *Loans by futures commission merchants; Treatment of proceeds.* A futures commission merchant may lend its own funds to 30.7 Customers on securities and property pledged, or from repledging or selling such securities and property pursuant to specific written agreement with such 30.7 Customers. The proceeds of such loans used to purchase, margin, guarantee, or secure the trades, contracts, or commodity options of 30.7 Customers shall be treated and dealt with by a futures commission merchant as belonging to such 30.7 Customers. A futures commission merchant may not loan funds on an unsecured basis to finance a 30.7 Customer's foreign futures and foreign options trading, nor may a futures commission merchant loan funds to a 30.7 Customer secured by the 30.7 Customer's trading account.

(k) *Permitted withdrawals.* A futures commission merchant may withdraw funds from 30.7 Customer Accounts in an amount necessary in the normal course of business to margin, guarantee, secure, transfer, or settle 30.7 Customers' foreign futures or foreign option positions with a foreign broker or clearing organization. A futures commission merchant also may withdraw funds from 30.7 Customer Accounts to pay commissions, brokerage, interest, taxes, storage, and other charges lawfully accruing in connection with the 30.7 Customers' foreign futures and foreign options positions.

(l) *Daily computation of 30.7 Customer secured amount requirement and details regarding the holding and investing of 30.7 Customer Funds.* (1) Each futures commission merchant is required to prepare a Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 contained in the Form 1–FR–FCM as of the close of each business day. Futures commission merchants that invest funds set aside as the foreign futures or foreign options secured amount in instruments described in § 1.25 of this chapter shall include such instruments in the computation of its secured amount requirements at values that at no time exceed current market value, determined as of the close of the market on the date for which such computation is made. Nothing in this paragraph shall affect the requirement that a futures commission merchant at all times maintain sufficient money, securities and property to cover its total obligations to all 30.7 Customers, in accordance with paragraph (a) of this section.

(2) A futures commission merchant may offset any net deficit in a particular 30.7 Customer's Account against the current market value of readily marketable securities, less deductions (*i.e.* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)), held for the same particular 30.7 Customer's Account in computing the daily Foreign Futures and Foreign Options Secured Amount. Futures commission merchants that establish and enforce written policies and procedures to assess the credit risk of commercial paper, convertible debt instruments, or nonconvertible debt instruments in accordance with Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) may apply the lower haircut percentages specified in Rule 240.15c3–1(c)(2)(vi) for such commercial paper, convertible debt instruments and nonconvertible debt instruments. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must set aside the securities in a safekeeping account compliant with paragraph (c) of this section. For purposes of this section, a security will be considered ''readily marketable'' if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(3) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization the daily Statement of Secured Amounts and Funds Held in Separate Accounts for

30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section by noon the following business day.

(4) Each futures commission merchant shall file the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(5) Each futures commission merchant is required to submit to the Commission and to the firm's designated self-regulatory organization a report listing of the names of all banks, trust companies, futures commission merchants, derivatives clearing organizations, foreign brokers, foreign clearing organizations, or any other depository or custodian holding 30.7 Customer Funds as of the fifteenth day of the month, or the first business day thereafter, and the last business day of each month. This report must include:

(i) The name and location of each depository holding 30.7 Customer Funds;

(ii) The total amount of 30.7 Customer Funds held by each depository listed in paragraph (l)(5) of this section; and

(iii) The total amount of cash and investments that each depository listed in paragraph (l)(5) of this section holds for the futures commission merchant. The futures commission merchant must report the following investments:

(A) Obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities);

(B) General obligations of any State or of any political subdivision of a State (municipal securities);

(C) General obligation issued by any enterprise sponsored by the United States (government sponsored enterprise securities);

(D) Certificates of deposit issued by a bank;

(E) Commercial paper fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation;

(F) Corporate notes or bonds fully guaranteed as to principal and interest by the United States under the Temporary Liquidity Guarantee Program as administered by the Federal Deposit Insurance Corporation; and

(G) Interests in money market mutual funds.

(6) Each futures commission merchant must report the total amount of customer owned securities held by the futures commission merchant as 30.7 Customer Funds and must list the names and locations of the depositories holding customer owned securities.

(7) Each futures commission merchant must report the total amount of 30.7 Customer Funds that have been used to purchase securities under agreements to resell the securities (reverse repurchase transactions).

(8) Each futures commission merchant must report which, if any, of the depositories holding 30.7 Customer Funds under paragraph (l)(5) of this section are affiliated with the futures commission merchant.

(9) Each futures commission merchant shall file the detailed list of depositories required by paragraph (l)(5) of this section by 11:59 p.m. the next business day in an electronic format using a form of user authentication assigned in accordance with procedures established or approved by the Commission.

(10) Each futures commission merchant shall retain its daily secured amount computation, the Statement of Secured Amounts and Funds Held in Separate Accounts for 30.7 Customers pursuant to Commission Regulation 30.7 required by paragraph (l)(1) of this section, and the detailed list of depositories required by paragraph (l)(5) of this section, together with all supporting documentation, in accordance with the requirements of § 1.31 of this part.

27. Add Appendix E and Appendix F to part 30 to read as follows:

Appendix E to Part 30—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Account

[Date]

[Name and Address of Depository]

We refer to the *Secured Amount Account(s)* which [Name of Futures Commission Merchant] (''we'' or ''our'') have opened or will open with [Name of Depository] (''you'' or ''your'') entitled:

[Name of Futures Commission Merchant] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 30.7 Customer Secured Account [If applicable, include any abbreviated name of the Account(s) as reflected in the Depository's electronic systems (provided any such abbreviated name must reflect that the Account(s) is a CFTC regulated customer secured account)]

Account Number(s):

(collectively, the ''Account(s)'').

You acknowledge and agree that we have opened or will open the above-referenced Account(s) for the purpose of depositing, as applicable, money, securities and other property (collectively ''Funds'') for or on behalf of our customers who are entering into foreign futures and/or foreign options transactions (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation 30.1, as amended). The Funds deposited in the Account(s) or accruing to the credit of the Accounts will be kept separate and apart and separately accounted for on your books from our own funds and all other accounts maintained by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 30 of the CFTC's regulations, as amended, and may not be commingled with our own funds in any proprietary account we maintain with you and the Funds must otherwise be treated in accordance with the provisions of the Act and CFTC Regulations.

Furthermore, you acknowledge and agree that such Funds may not be used by you or by us to secure or guarantee any obligations that we might owe to you, nor may they be used by us to secure credit from you. You further acknowledge and agree that the Funds in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you, and that you understand the nature of the Funds held or hereafter deposited in the Account(s) and that you will treat and maintain such Funds in accordance with the provisions of the Act and CFTC regulations. This prohibition does not affect your right to recover funds advanced in the form of cash transfers you make in lieu of liquidating non-cash assets held in the Account(s) for purposes of variation settlement or posting initial (original) margin.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place. You agree to respond promptly and directly to requests for confirmation of account balances and other account information from an appropriate officer, agent, or employee of the CFTC or a self-regulatory organization of which we are a member, without further notice to or consent from the futures commission merchant. You also agree that, immediately upon instruction by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member, you will provide any and all information regarding or related to the Funds or the Accounts as shall be specified in such instruction and as directed in such instruction. You further agree that you will provide the CFTC and our designated self-regulatory organization with the necessary software, a user log-in, and password that will allow the CFTC and our designated self-regulatory organization to have read-only access to the accounts listed above on your Web site on a 24-hour a day basis. This letter further constitutes the consent and authorization of the undersigned for you to respond immediately to requests from appropriate officers, agents, or employees of the CFTC or a self-regulatory

organization for information and/or confirmation of current and historical account balances of the Account(s).

You acknowledge and agree that you meet the requirements detailed for depositories in CFTC Regulation 30.7, as amended. You further acknowledge and agree that the Funds in the Account(s) shall be released immediately, subject to the requirements of US or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or from the director of the Division of Clearing and Risk of the CFTC, the director of the Division of Swap Dealer and Intermediary Oversight, or any successor divisions, or such directors' designees. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by the director of the Division of Clearing and Risk or the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees.

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Funds held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s), nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that you have no notice of or actual knowledge of, or could not reasonably know of, a violation of the Act or other provision of law by us; and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, including for the avoidance of doubt, regardless of the change in name of any party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to the Act and the CFTC's regulations, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter. You further acknowledge and agree to provide a copy of this fully executed letter directly to the CFTC (via electronic mail to *acknowledgmentletters@cftc.gov*) and our designated self-regulatory organization.

[Name of Futures Commission Merchant]
By:
Print Name:
Title:
ACKNOWLEDGED AND AGREED:
[Name of Depository]
By:
Print Name:
Title:
Contact Information: [Insert phone number and email address]
DATE:

Appendix F to Part 30:

CFTC Regulation 30.7—Acknowledgment Letter for CFTC Regulation 30.7 Customer Secured Money Market Mutual Fund Account [All of this was not proposed]

[Date]

[Name and Address of Money Market Mutual Fund]

We propose to invest funds held by [Name of Futures Commission Merchant or Derivatives Clearing Organization] (''we'' or ''our'') on behalf of our customers in shares of [Name of Money Market Mutual Fund] (''you'' or ''your'') under account(s) entitled (or shares issued to):

[Name of Futures Commission Merchant or Derivatives Clearing Organization] [if applicable, add ''FCM Customer Omnibus Account''] CFTC Regulation 30.7 Customer Secured Money Market Mutual Fund Account

[If applicable, include any abbreviated name of the Account(s) as reflected in the Depository's electronic systems (provided any such abbreviated name must reflect that the Account(s) is a CFTC regulated customer segregated account)]

Account Number(s): [ ]
(collectively, the ''Account(s)'').

You acknowledge and agree that we are holding these funds, including any shares issued and amounts accruing in connection therewith (collectively, the ''Shares''), for the benefit of our customers who are entering into foreign futures and/or foreign options transactions (as such terms are defined in U.S. Commodity Futures Trading Commission (''CFTC'') Regulation 30.1, as amended); that the Shares held by you, hereafter deposited in the Account(s) or accruing to the credit of the Accounts, will be kept separate and apart and separately accounted for on your books from our own funds and from any other funds or accounts held by us in accordance with the provisions of the Commodity Exchange Act, as amended (the ''Act''), and Part 30 of the CFTC's regulations, as amended; and that the Shares must otherwise be treated in accordance with the provisions of the Act and CFTC regulations.

Furthermore, you acknowledge and agree that such Shares may not be used by you or by us to secure or guarantee any obligations that we might owe to you, nor may they be used by us to secure credit from you. You further acknowledge and agree that the Shares in the Account(s) shall not be subject to any right of offset or lien for or on account of any indebtedness, obligations or liabilities we may now or in the future have owing to you.

In addition, you agree that the Account(s) may be examined at any reasonable time by an appropriate officer, agent or employee of the CFTC or a self-regulatory organization, and this letter constitutes the authorization and direction of the undersigned to permit any such examination or audit to take place. You agree to respond promptly and directly to requests for confirmation of account balances and other account information from an appropriate officer, agent, or employee of the CFTC or a self-regulatory organization of which we are a member, without further notice to or consent from the futures commission merchant. You also agree that, immediately upon instruction by the director of the Division of Swap Dealer and Intermediary Oversight of the CFTC or the director of the Division of Clearing and Risk of the CFTC, or any successor divisions, or such directors' designees, or any appropriate official of a self-regulatory organization of which we are a member, you will provide any and all information regarding or related to the Funds or the Accounts as shall be specified in such instruction and as directed in such instruction. You further agree that you will provide the CFTC and our designated self-regulatory organization with the necessary software, a user log-in, and password that will allow the CFTC and our designated self-regulatory organization to have read-only access to the accounts listed above on your Web site on a 24-hour a day basis. This letter further constitutes the consent and authorization of the undersigned for you to respond immediately to requests from appropriate officers, agents, or employees of the CFTC or a self-regulatory organization for information and/or confirmation of current and historical account balances of the Account(s).

You acknowledge and agree that the Shares in the Account(s) shall be released immediately, subject to the requirements of U.S. or non-U.S. law as applicable, upon proper notice and instruction from an appropriate officer or employee of us or from the director of the Division of Clearing and Risk or the director of the Division of Swap Dealers and Intermediary Oversight of the CFTC, or any successor divisions, or such directors' designees. We will not hold you responsible for acting pursuant to any instruction from the CFTC upon which you have relied after having taken reasonable measures to assure that such instruction was provided to you by the director of the Division of Clearing and Risk of the CFTC, or any successor division, or such director's designee. You further acknowledge that you will provide to the CFTC a copy of this fully executed acknowledgment (via electronic mail to *acknowledgmentletters@cftc.gov*).

In the event we become subject to either a voluntary or involuntary petition for relief under the U.S. Bankruptcy Code, we acknowledge that you will have no obligation to release the Shares held in the Account(s), except upon instruction of the Trustee in Bankruptcy or pursuant to the Order of the respective U.S. Bankruptcy Court.

Notwithstanding anything in the foregoing to the contrary, nothing contained herein shall be construed as limiting your right to assert any right of set off against or lien on assets other than assets maintained in the Account(s), nor to impose such charges against us or any proprietary account maintained by us with you. Further, it is understood that amounts represented by checks, drafts or other items shall not be considered to be part of the Account(s) until finally collected. Accordingly, checks, drafts and other items credited to the Account(s) and subsequently dishonored or otherwise returned to you, or reversed, for any reason and any claims relating thereto, including but not limited to claims of alteration or forgery, may be charged back to the Account(s), and we shall be responsible to you as a general endorser of all such items whether or not actually so endorsed.

You may conclusively presume that any withdrawal from the Account(s) and the balances maintained therein are in conformity with the Act and CFTC regulations without any further inquiry, provided that you have no notice of or actual knowledge of, or could not reasonably know of, a violation of the Act or other provision of law by us; and you shall not in any manner not expressly agreed to herein be responsible for ensuring compliance by us with the provisions of the Act and CFTC regulations.

You may, and are hereby authorized to, obey the order, judgment, decree or levy of any court of competent jurisdiction or any governmental agency with jurisdiction, which order, judgment, decree or levy relates in whole or in part to the Account(s). In any event, you shall not be liable by reason of any such action or omission to act, to us or to any other person, firm, association or corporation even if thereafter any such order, decree, judgment or levy shall be reversed, modified, set aside or vacated.

We are permitted to invest our Commodity Customers' funds in money market mutual funds pursuant to CFTC Regulation 1.25. That rule sets forth the following conditions, among others, with respect to any investment in a money market mutual fund:

(1) The net asset value of the fund must be computed by 9:00 a.m. of the business day following each business day and be made available to us by that time;

(2) The fund must be legally obligated to redeem an interest in the fund and make payment in satisfaction thereof by the close of the business day following the day on which we make a redemption request except as otherwise specified in CFTC Regulation 1.25(c)(5)(ii); and

(3) The agreement under which we invest our Commodity Customers' funds must not contain any provision that would prevent us from pledging or transferring fund shares.

The terms of this letter agreement shall remain binding upon the parties, their successors and assigns, including for the avoidance of doubt, regardless of the change in name of any party. This letter agreement supersedes and replaces any prior agreement between the parties in connection with the Account(s), including but not limited to any prior acknowledgment letter, to the extent that such prior agreement is inconsistent with the terms hereof. In the event of any conflict between this letter agreement and any other agreement between the parties in connection with the Account(s), this letter agreement shall govern with respect to matters specific to Section 4d of the Act and the CFTC's regulations, as amended.

This letter agreement shall be governed by and construed in accordance with the laws of [Insert governing law] without regard to the principles of choice of law.

Please acknowledge that you agree to abide by the requirements and conditions set forth above by signing and returning the enclosed copy of this letter. You further acknowledge and agree to provide a copy of this fully executed letter directly to the CFTC and our designated self-regulatory organization.

[Name of Futures Commission Merchant or Derivatives Clearing Organization]

By:

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

[Name of Money Market Mutual Fund]

By:

Print Name:

Title:

Contact Information: [Insert phone number and email address]

DATE:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

28. The authority citation for part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

29. In § 140.91, redesignate paragraph (a)(8) as paragraph (a)(12) and paragraph (a)(7) as paragraph (a)(8), add new paragraphs (a)(7), (a)(9), (a)(10), and (a)(11), and revise paragraph (b) to read as follows:

§ 140.91 Delegation of authority to the Director of the Division of Clearing and Risk and to the Director of the Division of Swap Dealer and Intermediary Oversight.

(a) * * *

(7) All functions reserved to the Commission in § 1.20 of this chapter.

* * * * *

(9) All functions reserved to the Commission in § 1.26 of this chapter.

(10) All functions reserved to the Commission in § 1.52 of this chapter.

(11) All functions reserved to the Commission in § 30.7 of this chapter.

* * * * *

(b) The Director of the Division of Clearing and Risk and the Director of the Division of Swap Dealer and Intermediary Oversight may submit any matter which has been delegated to him or her under paragraph (a) of this section to the Commission for its consideration.

* * * * *

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Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF __/__/____

	Assets					
	Current		Non-Current		Total	
1. Funds segregated or in separate accounts pursuant to the CEAct and the Regulations						
A. U.S. exchanges (page 11, line 13)	$ 0	1000			$ 0	1005
B. Dealer options (page 12, line 2.C.)	0	1010			0	1015
C. Foreign exchanges (page 14, line 8)	0	1020	$ 0	1025	0	1030
D. Cleared Swaps (page XX, line X)	0	XXX	0	XXX	0	XXX
(Do not Duplicate line 1. assets below)						
2. Cash	0	1040	0	1045	0	1050
3. Securities, at market value						
A. Firm owned	0	1055	0	1060	0	1065
B. Noncustomer-owned	0	1070			0	1075
C. Individual partners' and members' security accounts	0	1090			0	1095
D. Stock in clearing organizations	0	1100	0	1105	0	1110
4. Securities purchased under resale agreements	0	1115	0	1120	0	1125
5. Receivables from and deposits with U.S. derivatives clearing organizations						
A. Margins	0	1130			0	1135
B. Settlement receivable	0	1140			0	1145
C. Guarantee deposits	0	1150			0	1155
D. Net long options value	0	1157			0	1158
6. Receivables from and deposits with foreign commodity clearing organizations						
A. Margins	0	1160	0	1165	0	1170
B. Settlement receivable	0	1175			0	1180
C. Guarantee deposits	0	1182	0	1185	0	1190
D. Net long options value	0	1191	0	1192	0	1193
7. Receivables from registered FCMs						
A. Net liquidating equity	0	1195	0	1200	0	1205
B. Security deposits			0	1210	0	1215
C. Other	0	1220	0	1225	0	1230
8. Receivables from foreign commodity brokers						
A. Net liquidating equity	0	1235	0	1240	0	1245
B. Security deposits			0	1250	0	1255
C. Other	0	1260	0	1265	0	1270

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF __/__/____

Liabilities & Ownership Equity

Liabilities

21. Payables to banks		
A. Secured loans		2000
B. Unsecured loans		2010
C. Overdrafts		2020
22. Equities in commodity accounts and cleared swaps accounts		
A. Customers trading on U.S. commodity exchanges		2030
B. Customers trading on foreign exchanges		2040
C. Customers' dealer option accounts		2050
D. Noncustomers' accounts		2060
E. General partners' and members' trading accounts (not included in capital)		2070
F. Customers trading cleared swaps		XXXX
23. Payable to U.S. derivatives clearing organizations		2080
Including short option value $ 0		
24. Payable to foreign commodity clearing organizations		2090
Including short option value $ 0		
25. Payable to registered futures commission merchants		2100
26. Payable to foreign commodity brokers		2110
27. Accounts payable, accrued expenses and other payables		
A. Accounts payable and accrued expenses		2120
B. Salaries, wages, commissions and bonuses payable		2130
C. Taxes payable		2140
D. Deferred income taxes		2150
E. Security deposits held		2160
F. Advances against commodities		2170
G. Unrealized losses on forward contracts and commitments		2180
H. Due to subsidiaries and affiliates		2190
I. Notes, mortgages and other payables due within twelve months		2200
J. Obligation to Retail FX Customers		XXXXX
K. Other (itemize on a separate page)		2210
28. Notes, mortgages and other payables not due within twelve months of the date of this statement		
A. Unsecured		2220
B. Secured		2230

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION
FOR CUSTOMERS TRADING ON U.S. COMMODITY EXCHANGES
AS OF xx/xx/xxxx

SEGREGATION REQUIREMENTS (Section 4d(2) of the CEAct)				
1. Net ledger balance				
A. Cash			$ 0	5000
B. Securities (at market)			0	5010
2. Net unrealized profit (loss) in open futures contracts traded on a contract market			0	5020
3. Exchange traded options				
A. Market value of open option contracts purchased on a contract market			0	5030
B. Market value of open option contracts granted (sold) on a contract market			0	5040
4. Net equity (deficit) (add lines 1, 2, and 3)			$ 0	5050
5. Accounts liquidating to a deficit and accounts with				
debit balances - gross amount	$ 0	5060		
Less: amount offset by customer owned securities	0	5070	0	5080
6. Amount required to be segregated (add lines 4 and 5)			$ 0	5090
FUNDS IN SEGREGATED ACCOUNTS				
7. Deposited in segregated funds bank accounts				
A. Cash			$ 0	5100
B. Securities representing investment of customers' funds (at market)			0	5110
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5120
8. Margins on deposit with derivatives clearing organizations of contract markets				
A. Cash			0	5130
B. Securities representing investments of customers' funds (at market)			0	5140
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5150
9. Net settlement from (to) derivatives clearing organizations of contract markets			0	5160
1				
A. Value of open long option contracts			0	5170
B. Value of open short option contracts			0	5180
11. Net equities with other FCMs				
A. Net liquidating equity			0	5190
B. Securities representing investments of customers' funds (at market)			0	5200
C. Securities held for particular customers or option customers in lieu of cash (at market)			0	5210
12. Segregated funds on hand (describe:)			0	5215
13. Total amount in segregation (add lines 7 through 12)			$ 0	5220
14. Excess (deficiency) funds in segregation (subtract line 6 from line 13)			$ 0	5230
15. Management Target Amount for Excess funds in segregation			$ 0	5240
16. Excess (deficiency) funds in segregation over (under) Management Target Amount Excess			$ 0	5250
17. Sum of Margin Deficits for futures customers			$ 0	
18. Excess (Deficiency) of Residual Interest (Line 14) over Sum of Margin Deficits (Line 17)			$ 0	

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
PURSUANT TO COMMISSION REGULATION 30.7
AS OF xx/xx/xxxx

FOREIGN FUTURES AND FOREIGN OPTIONS SECURED AMOUNTS

[ ] [ ] Amount required to be set aside pursuant to law, rule or regulation of a foreign government or a rule of a self-regulatory organization authorized thereunder

1. Net ledger balance - Foreign Futures and Foreign Options Trading - All Customers			
A. Cash		$ 0	[ ]
B. Securities (at market)		0	[ ]
2. Net unrealized profit (loss) in open futures contracts traded on a foreign board of trade		0	[ ]
3. Exchange traded options			
A. Market value of open option contracts purchased on a foreign board of trade		0	[ ]
B. Market value of open option contracts granted (sold) on a foreign board of trade		0	[ ]
4. Net equity (deficit) (add lines 1, 2, and 3)		$ 0	[ ]
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 0 [ ]		
Less: amount offset by customer owned securities	0 [ ]	0	[ ]
6. Amount required to be set aside as the secured amount - Net Liquidating Equity Method (add lines 4 and 5)		$ 0	[ ]
7. Greater of amount required to be set aside pursuant to foreign jurisdiction (above) or line 6.		$ 0	[ ]

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM
STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
PURSUANT TO COMMISSION REGULATION 30.7
AS OF xx/xx/xxxx

FUNDS DEPOSITED IN SEPARATE REGULATION 30.7 ACCOUNTS

1. Cash in Banks					
A. Banks located in the United States	$ 0	5700			
B. Other Banks qualified under Regulation 30.7					
Name(s): 5710	0	5720	$ 0	5730	
2. Securities					
A. In safekeeping with banks located in the United States	$ 0	5740			
B. In safekeeping with other banks qualified under Regulation 30.7					
Name(s): 5750	0	5760	0	5770	
3. Equities with registered futures commission merchants					
A. Cash	$ 0	5780			
B. Securities	0	5790			
C. Unrealized gain (loss) on open futures contracts	0	5800			
D. Value of long option contracts	0	5810			
E. Value of short option contracts	0	5815	0	5820	
4. Amounts held by clearing organizations of foreign boards of trade					
Name(s): 5830					
A. Cash	$ 0	5840			
B Securities	0	5850			
C. Amount due to (from) clearing organization - daily variation	0	5860			
D. Value of long option contracts	0	5870			
E. Value of short option contracts	0	5875	0	5880	
5. Amounts held by members of foreign boards of trade					
Name(s): 5890					
A. Cash	$ 0	5900			
B. Securities	0	5910			
C. Unrealized gain (loss) on open futures contracts	0	5920			
D. Value of long option contracts	0	5930			
E. Value of short option contracts	0	5935	0	5940	
6. Amounts with other depositories designated by a foreign board of trade					
Name(s): 5950			0	5960	
7. Segregated funds on hand (describe:)			0	5965	
8. Total funds in separate section 30.7 accounts (to page 13, line 2)			$ 0	5970	
9. Excess (deficiency) Set Aside Funds for Secured Amount (subtract line 7 Secured Statement Page 1 from Line 8)			$ 0		
10. Management Target Amount for Excess funds in separate section 30.7 accounts			$ 0		
11. Excess (deficiency) funds in separate section 30.7 accounts over (under) Management Target Excess			$ 0		
12. Sum of Margin Deficits for 30.7 customers			$ 0		
13. Excess (Deficiency) of Residual Interest (Line 9) over Sum of Margin Deficits (Line 12)			$ 0		

Name of Company: Employer ID No: NFA ID No:

CFTC FORM 1-FR-FCM --- SEC FOCUS II --- SEC FOCUS II CSE

STATEMENT OF CLEARED SWAPS CUSTOMER SEGREGATION REQUIREMENTS AND FUNDS IN CLEARED SWAPS CUSTOMER ACCOUNTS UNDER 4D(F) OF THE CEA

Cleared Swaps Customer Requirements				
1. Net ledger balance				
A. Cash			$ 0	X500
B. Securities (at market)			$ 0	X510
2. Net unrealized profit (loss) in open cleared swaps			$ 0	X520
3. Cleared swaps options				
A. Market value of open cleared swaps option contracts purchased			$ 0	X530
B. Market value of open cleared swaps option contracts granted (sold)			$ 0	X540
4. Net equity (deficit) (add lines 1, 2, and 3)			$ 0	X550
5. Accounts liquidating to a deficit and accounts with				
debit balances - gross amount	$ 0	X560		
Less: amount offset by customer owned securities	$ 0	X570	$ 0	X580
6. Amount required to be segregated for cleared swaps customers (add lines 4 and 5)			$ 0	X590
Funds in Cleared Swaps Customer Segregated Accounts				
7. Deposited in cleared swaps customer segregated accounts at banks				
A. Cash			$ 0	X600
C. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X610
E. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X620
8. Margins on deposit with derivatives clearing organizations in cleared swaps customer segregated accounts				
A. Cash			$ 0	X630
B. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X640
C. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X650
9. Net settlement from (to) derivatives clearing organizations			$ 0	X660
10. Cleared swaps options				
A. Value of open cleared swaps long option contracts			$ 0	X670
B. Value of open cleared swaps short option contracts			$ 0	8680
11. Net equities with other FCMs				
A. Net liquidating equity			$ 0	X690
B. Securities representing investments of cleared swaps customers' funds (at market)			$ 0	X700
C. Securities held for particular cleared swaps customers in lieu of cash (at market)			$ 0	X710
12. Cleared swaps customer funds on hand (describe:)			$ 0	X715
13. Total amount in cleared swaps customer segregation (add lines 7 through 12)			$ 0	X720
14. Excess (deficiency) funds in cleared swaps customer segregation (subtract line 6 from line 13)			$ 0	X730
15. Management Target Amount for Excess funds in cleared swaps segregated accounts			$ 0	
16. Excess (Deficiency) funds in cleared swaps customer segregated accounts over (under) Management Target Excess			$ 0	
17. Sum of Margin Deficits for Cleared Swaps Customers			$ 0	
18. Excess (Deficiency) of Residual Interest (Line 14) over Sum of Margin Deficits (Line 17)			$ 0	

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Issued in Washington, DC, on October 23, 2012 by the Commission.

Stacy Yochum,

Counsel.

Appendices to Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

Appendix 2— Statement of Chairman Gary Gensler

I support the proposed rules to enhance the protections afforded customers that participate in the futures and swaps markets, including the protection of customer funds held by futures commission merchants (FCMs) and derivatives clearing organizations.

The CFTC's mission is to ensure the integrity of the futures and swaps markets. As part of this, we must do everything within our authorities and resources to strengthen oversight programs and the protection of customers and their funds. And that's the goal of this proposal. It's about ensuring customers have confidence that the funds they post as margin or collateral are fully segregated and protected.

CFTC Commissioners and staff have reached out broadly on ways to enhance customer protections. We hosted two roundtables this year on issues ranging from the segregation of customer funds to examining the CFTC's oversight of self-regulatory organizations (SROs).

In July, the CFTC approved a National Futures Association (NFA) proposal that stemmed from a coordinated effort by the CFTC, the SROs, other financial regulators, and market participants, including from the CFTC's roundtable earlier this year.

This customer protection proposal incorporates these NFA rules into the Commission's regulations so that the CFTC

can directly enforce these important rules. Under this proposal, FCMs would be required to:

• Hold sufficient funds in Part 30 secured accounts (funds held for U.S. foreign futures and options customers trading on foreign contract markets) to meet their total obligations to customers trading on foreign markets computed under the net liquidating equity method. FCMs would no longer be allowed to use the alternative method, which had allowed them to hold a lower amount of funds representing the margin on their foreign futures;

• Maintain written policies and procedures governing the maintenance of excess funds in customer segregated and Part 30 secured accounts. Withdrawals of 25 percent or more would necessitate pre-approval in writing by senior management and must be reported to the designated SRO and the CFTC; and

• Make additional reports available to the SRO and the CFTC, including daily computations of segregated and Part 30 secured amounts.

Beyond the NFA rules, additional reforms in this proposal benefited from the CFTC's broad outreach and consultation with the SROs and market participants, as well as substantial feedback from CFTC Commissioners. They include:

• First, bringing the regulators' view of customer accounts into the 21st century by giving the SROs and the CFTC direct electronic access to FCMs' bank and custodial accounts for customer funds, without asking the FCMs' permission. Further, acknowledgement letters and confirmation letters must come directly to regulators from banks and custodians.

• Second, increasing disclosures to customers regarding the risks associated with futures trading and using FCMs to invest their funds. Futures customers, if they wish, should have access to information about how their assets are held, similar to that which is available to mutual fund and securities customers. FCMs would be required to provide current and potential customers with specific information about the FCM's risks.

• Third, enhancing controls at FCMs regarding how customer accounts are handled, including policies and procedures on supervision and risk management of customer funds.

• Fourth, setting standards for the SROs' examinations and the annual certified financial statement audits, including raising minimum standards for independent public accountants who audit FCMs.

• Fifth, requiring FCMs to ensure they back up segregated customer accounts with funds to cover potential margin deficits.

• Sixth, implementing a more effective early warning system for the Commission and the SROs that alerts them to certain problems, including a) when an FCM's funds are insufficient to meet the targeted residual interest in customer accounts b) when there is a material adverse impact to the FCM's creditworthiness and c) when there is a material change to the FCM's clearing or financial arrangements.

• And seventh, instituting a liquidity requirement for FCMs, in addition to the existing capital requirement, to better detect FCMs that have become distressed and may put customer funds at risk.

Prior to this proposal, the Commission already made some important improvements to protections for customer funds. They include:

• The completed amendments to rule 1.25 regarding the investment of funds that bring customers back to protections they had prior to exemptions the Commission granted between 2000 and 2005. Importantly, this prevents use of customer funds for in-house lending through repurchase agreements;

• Clearinghouses will have to collect margin on a gross basis and FCMs will no longer be able to offset one customer's collateral against another and then send only the net to the clearinghouse;

• The so-called ''LSOC rule'' (legal segregation with operational comingling) for swaps ensures customer money is protected individually all the way to the clearinghouse; and

• The Commission included customer protection enhancements in the final rule for designated contract markets. These provisions codify into rules staff guidance on minimum requirements for SROs regarding their financial surveillance of FCMs.

It is crucial that the CFTC, working with SROs and market participants, continues its efforts to enhance protections for the funds of both futures and swaps customers. We look forward to reviewing the public input on this proposal.

Appendix 3—Statement of Commissioner Jill E. Sommers

Today the Commission has proposed a new set of rules to, among other things, increase customer protections and disclosures, strengthen risk management programs, and enhance auditing and examination procedures for futures commission merchants (FCMs). In light of the recent events surrounding MF Global and Peregrine, I am, of course, supportive of such steps to the extent that they lead to greater customer protection and increased customer awareness of the risks associated with their futures and swaps accounts.

As always, I am sensitive to the fact that some regulation, while well intended, may not further its stated goals or may be so burdensome that the benefits do not justify the costs. I encourage members of the public to comment, both to support the aspects of this proposed rule that take appropriate steps towards achieving the Commission's objectives and to highlight the areas of the proposal that they believe may be unnecessary or that could be accomplished through more efficient means. In particular, I welcome comment on the Commission's proposal requiring an FCM to maintain residual interest in segregated accounts in an amount that exceeds the sum of all futures customers' margin deficits. Additionally, it would be helpful to hear from self-regulatory organizations (SROs) regarding whether reviews by an examinations expert would assist the SROs in the application of their respective supervisory programs.

I am hopeful that, with the help of thoughtful recommendations from market participants, the Commission will finalize an effective and streamlined rule improving protections for futures and swaps customers.

Appendix 4—Statement of Commissioner Scott O'Malia

In response to the Peregrine and MF Global failures, the Commission has proposed a new set of rules to enhance the level of protection afforded customers of the futures markets. In particular, the proposal calls for FCMs to maintain adequate capital in their customer accounts to ensure customers are not bearing the credit risk of their fellow customers, implement controls around the risks specific to a particular FCM's business, increase the level of disclosures provided to customers, and create an independent segregation account balance verification system. While these measures are a good start, I believe that it is essential to focus on a comprehensive technological solution that goes beyond what the Commission has proposed in this release. Technology can be a cost effective oversight tool for both customers and the Commission to enhance transparency and improve risk management. Improving our capacity to monitor money flows can serve as a significant deterrent against fraudulent behavior.

I encourage industry participants to voice their opinion as to how the proposals put forth today can be improved upon. Specifically, what technological solutions can be employed to facilitate the dissemination of information about FCMs to their customers so that they may ''know their FCM''? How can firms implement the new capital requirements in the most cost effective manner? What is the best method for an FCM to monitor its level of risk? I look forward to hearing from market participants on the most effective ways to implement the customer protection rules proposed by the Commission today.

I would also like to highlight one of today's proposals that will require additional development in order to fulfill the goal of customer protection. Today's proposal calls for the creation of an electronic balance confirmation process that would allow the Commission and Self-Regulatory Organizations (''SROs'') to independently check the balance of each segregated account held on behalf of customers. While this can be used to aid in the surveillance of account balances, the Commission proposal only works on an individual basis and requires significant human involvement to log in and monitor individual accounts. What the industry needs is a fully automated system that allows the Commission and SROs to download the account balances for each segregated account held for a customer and compare that balance to the figures on record at each FCM. In response to the Peregrine and MF Global failures, industry participants discussed the implementation of such a system in July of this year during the Commission's Technology Advisory Committee (TAC) meeting. During the meeting, the TAC members present were virtually unanimous in their belief that an automated customer fund verification system was needed. Certain TAC members also made presentations discussing the technological

hurdles that must be overcome in order to put such a system in place.

On October 30th we will have another TAC meeting during which SROs will update us on the status of this system's implementation and their estimates for when it will be fully operational. Only when this system is up and running can customers of the futures industry feel secure that their investments are in safe hands and properly monitored by both the Commission and SROs. This is an issue of utmost importance and requires collaboration on the part of the Commission, SROs and each and every Commission registrant. The end result of this process will provide customers with the assurance they need to continue investing in the derivatives markets.

I hope market participants will provide thoughtful recommendations to improve customer protections and deploy technology that is cost-effective to create and maintain. I also encourage market participants to provide specific data that the Commission can use to develop a robust cost benefit analysis.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2013–2014 Biennial Specifications and Management Measures; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120814338–2338–01]

RIN 0648–BC35

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2013–2014 Biennial Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish the 2013–2014 harvest specifications and management measures for groundfish taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (PCGFMP). This proposed rule would also revise the collection of management measures in the groundfish fishery regulations that are intended to keep the total catch of each groundfish species or species complex within the harvest specifications.

DATES: Comments must be received no later than December 5, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0202, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0202 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to William Stele, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Sarah Williams.
- *Fax:* 206–526–6736, Attn: Sarah Williams.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Information relevant to this proposed rule, which includes a draft environmental impact statement (EIS), a regulatory impact review (RIR), and an initial regulatory flexibility analysis (IRFA) are available for public review during business hours at the office of the Pacific Fishery Management Council (Council), at 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280. Copies of additional reports referred to in this document may also be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Sarah Williams, phone: 206–526–4646, fax: 206–526–6736, or email: *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm* and at the Council's Web site at *http://www.pcouncil.org.*

Executive Summary

I. Purpose of the Regulatory Action

This proposed rule is needed to implement the 2013–2014 harvest specifications and management measures for groundfish species taken in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The purpose of the proposed action is to conserve and manage Pacific Coast groundfish fishery resources to prevent overfishing, to rebuild overfished stocks, to ensure conservation, to facilitate long-term protection of essential fish habitats (EFH), and to realize the full potential of the Nation's fishery resources. The need for this proposed action is to set catch limit specifications and management measures for 2013–2014 that are consistent with existing or revised overfished species target rebuilding years and harvest control rules for all stocks. These harvest specifications are set consistent with the optimum yield (OY) harvest management framework described in Chapter 4 of the PCGFMP. This rule is authorized by 16 U.S.C. 1854–55 and by the PCGFMP.

II. Major Provisions

This proposed rule contains two types of major provisions. The first are the harvest specifications (overfishing limits (OFLs), acceptable biological catches (ABCs), and annual catch limits (ACLs)), and the second are management measures designed to keep fishing mortality within the ACLs. The harvest specifications (OFLs, ABCs, and ACLs) in this rule have been developed through a rigorous scientific review and decision-making process, which is described in detail later in this proposed rule.

In summary, the OFL is the maximum sustainable yield (MSY) harvest level and is an estimate of the catch level above which overfishing is occurring. OFLs are based on recommendations by the Council's Scientific and Statistical Committee (SSC) as the best scientific information available. The ABC is an annual catch specification that is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended method for incorporating scientific uncertainty is referred to as the P star-sigma approach and is discussed in more detail below and in the proposed and final rules for the 2011–2012 biennial specifications and management measures (75 FR 67810, November 3, 2010 and 76 FR 27508, May 11, 2011). The ACL is a harvest specification set equal to or below the ABC. The ACLs are decided in a manner to achieve OY from the fishery, which is the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities and taking into account the protection of marine ecosystems. The ACLs are based on consideration of conservation objectives, socio-economic concerns, management uncertainty, and other factors. All known sources of fishing and research catch are counted against the ACL.

This proposed rule includes ACLs for the seven overfished species managed

under the PCGFMP. For the 2013–2014 biennium two species, canary rockfish and Pacific ocean perch (POP), require rebuilding plan changes. These changes are necessary because the rebuilding analyses prepared showed that even in the absence of fishing, these two species were unlikely to rebuild by the current target rebuilding year (T_{TARGET}) in their rebuilding plans. The EIS prepared for this action analyzed a range of POP and canary rockfish ACLs arrayed in different configurations along with the ACLs for other stocks and the management measures needed to prevent ACLs from being exceeded. These ''integrated alternatives'' are designed to help demonstrate how changes in POP and canary rockfish ACLs affect access to target stocks or influence projected mortalities of overfished species, among other factors. This integrated approach is also described in the proposed rule for the 2011–2012 harvest specifications and management measures (75 FR 67810, November 3, 2010). However, unlike the integrated alternatives from the last biennium, for 2013–2014 the integrated alternatives varied mainly with respect to the ACLs for canary rockfish and POP, as those were the only species for which new scientific information required changes to rebuilding plans. Because of the multispecies nature of the groundfish fishery (the ACL of one species can influence the ACL and/or access to another species), the choice of canary rockfish and POP harvest rates, and the resulting ACLs and $T_{TARGETS}$, were carefully considered by the Council. In their final recommendation, the Council weighed many factors including rebuilding progress, biology of the stock, economic impacts, allocations, and the need for new or more restrictive management measures. Ultimately, the Council recommended maintaining the harvest rate in the existing rebuilding plans for POP and canary rockfish and establishing revised $T_{TARGETS}$.

In order to keep mortality of the species managed under the PCGFMP within the ACLs the Council also recommended management measures. Generally speaking, management measures are intended to rebuild overfished species, prevent ACLs from being exceeded, and allow for the harvest of healthy stocks. Management measures include time and area restrictions, gear restrictions, trip or bag limits, size limits, and other management tools. Management measures may vary by fishing sector because different fishing sectors require different types of management to control catch. The groundfish fishery is also managed with a variety of other regulatory requirements, many of which are not proposed to be changed through this rulemaking. Most of the management measures the Council recommended for 2013–2014 were slight variations to existing management measures and do not represent a change from current management practices. These types of changes include changes to trip limits, bag limits, closed areas, etc. However, several new management measures were recommended by the Council including: Changes to latitude and longitude coordinates that define the boundaries of the Rockfish Conservation Areas (RCA)s; the ability to routinely modify deductions from the ACL to assign fish to different sectors that would otherwise go unharvested while still preventing ACLs from being exceeded; a requirement that all fish from a landing be offloaded before a new trip begins to improve catch accounting; a new sorting requirement for blackgill rockfish so mortality can be accounted against the new species-specific blackgill rockfish harvest guideline (HG); the ability for NMFS to modify the percentage of surplus carryover in the Shorebased Individual Fishing Quota (IFQ) Program, as an inseason action based on a Council recommendation; and a clarification to the threshold at which participants in the limited entry fixed gear sablefish primary fishery would transition from fishing their tier limits and begin fishing against trip limits.

Background

The Pacific Coast Groundfish fishery is managed under the PCGFMP. The PCGFMP was prepared by the Council, approved on July 30, 1984, and has been amended numerous times. Regulations at 50 CFR part 660, subparts C through G, implement the provisions of the PCGFMP.

The PCGFMP requires the harvest specifications and management measures for groundfish to be set at least biennially. This proposed rule is based on the Council's final recommendations that were made at its June 2012 meeting.

Specification and Management Measure Development Process

The process for setting the 2013 and 2014 biennial harvest specifications began in 2011 with the preparation of stock assessments. A stock assessment is the scientific and statistical process where the status of a fish population or subpopulation (stock) is assessed in terms of population size, reproductive status, fishing mortality, and sustainability. In the terms of the PCGFMP, stock assessments generally provide: (1) An estimate of the current biomass (reproductive potential); (2) an F_{MSY} or proxy (a default harvest rate for the fishing mortality rate that is expected to achieve the maximum sustainable yield), translated into exploitation rate; (3) an estimate of the biomass that produces the maximum sustainable yield (B_{MSY}); and, (4) a precision estimate (e.g., confidence interval) for current biomass. Each stock assessment is reviewed by the Council's stock assessment review panel (STAR panel). The STAR panel is designed to review the technical merits of stock assessments and is responsible for determining if a stock assessment document is sufficiently complete. Finally, the SSC reviews the stock assessment and STAR panel reports and makes recommendations to the Council. In addition to full stock assessments, stock assessment updates that run new data through existing models without changing the model are also prepared.

When spawning stock biomass falls below the minimum stock size threshold (MSST), a stock is declared overfished and a rebuilding plan must be developed that determines the strategy for rebuilding the stock to B_{MSY} in the shortest time possible while considering needs of fishing communities and other factors (16 U.S.C. 1854(e)). The current MSST reference point for assessed flatfish stocks is 12.5 percent of initial biomass or $B_{12.5}$%. For all other assessed groundfish stocks, the current MSST reference point is 25 percent of initial biomass or B_{25}%. The following overfished groundfish stocks would be managed under rebuilding plans in 2013 and 2014: bocaccio south of 40°10′ N. lat.; canary rockfish; cowcod south of 40°10′ N. lat.; darkblotched rockfish; Pacific Ocean Perch (POP); petrale sole; and yelloweye rockfish. NMFS declared widow rockfish rebuilt based on the most recent stocks assessment and therefore widow rockfish will not be managed under a rebuilding plan after 2012.

For overfished stocks, in addition to any stock assessments or stock assessment updates, rebuilding analyses are also prepared. The rebuilding analysis is used to project the future status of the overfished resource under a variety of alternative harvest strategies and to determine the probability of recovering to B_{MSY} or its proxy within a specified time-frame. The SSC establishes minimum requirements for rebuilding analyses and encourages analysts to explore alternative calculations and projections that may more accurately capture uncertainties in

stock rebuilding and better represent stock-specific concerns. The SSC groundfish subcommittee reviews the rebuilding analyses and associated modeling issues, and makes recommendations relative to the best available information for management decisions. The SSC also encourages explicit consideration of uncertainty in projections of stock rebuilding for individual stocks, including comparisons of alternative states of nature using decision tables to quantify the impact of model uncertainty. Each rebuilding analysis includes: An estimation of B_0 (the unfished biomass) and B_{MSY} or its proxy; the selection of a method to generate future recruitment; the specification of the mean generation time; a calculation of the minimum possible rebuilding time (T_{MIN}), which is the time to rebuild to B_{MSY} with a 50 percent probability starting from the time when the rebuilding plan was first implemented assuming no fishing occurs; $T_{F=0}$, which is the number of years needed to rebuild to B_{MSY} with a 50 percent probability if all future fishing mortality was eliminated from the first year of the biennium, in this case 2013; and the identification and analysis of alternative harvest strategies and rebuilding times.

The Council considered new stock assessments, stock assessment updates, rebuilding analyses, public comment, and advice from its advisory bodies over the course of six Council meetings during development of its recommendations for the 2013–2014 harvest specifications and management measures. At each Council meeting between September 2011 and June 2012, the Council made a series of decisions and recommendations that were in some cases refined after further analysis and discussion. Detailed information, including the supporting documentation the Council considered at each meeting is available at the Council's Web site, *www.pcouncil.org.*

A draft EIS identifying the preliminary preferred alternative for each decision point was made available to the public, the Council, and the Council's advisory bodies prior to the June 2012 Council meeting. At that meeting, following public comment and Council consideration, the Council made its final recommendations on the 2013 and 2014 harvest specifications and management measures as well as Amendment 21–2 to the PCGFMP. Amendment 21–2 would reinstate previous catch accounting methodologies that were inadvertently removed through Amendment 21. This proposed rule does not contain regulations to implement Amendment 21–2 to the PCGFMP. The amendment was analyzed in the EIS and was part of the Council's final action. However, in consultation with NMFS, the Council chose not to transmit the FMP amendment at this time because additional work on the implementing regulations was necessary. It is anticipated that the FMP amendment, and any necessary implementing regulations, will be transmitted at a later date.

Additional information regarding the OFLs, ABCs, and ACLs being proposed for groundfish stocks and stock complexes in 2013–2014 is presented below, followed by a description of the proposed management measures for commercial and recreational groundfish fisheries.

Harvest Specifications

Proposed OFLs for 2013 and 2014

The OFL is the MSY harvest level associated with the current stock abundance and is an estimate of the level of total catch of a stock or stock complex above which overfishing is occurring. The OFLs for groundfish species with stock assessments are derived by multiplying the F_{MSY} harvest rate proxy by the current estimated biomass. F_x% harvest rates are the rates of fishing mortality that will reduce the female spawning biomass per recruit (SPR) to X percent of its unfished level. A rate of F_{40}% is a more aggressive harvest rate than F_{45}% or F_{50}%.

For 2013 and 2014, the Council maintained a policy of using a default harvest rate as a proxy for the fishing mortality rate that is expected to achieve the maximum sustainable yield (F_{MSY}). A proxy is used because there is insufficient information for most Pacific Coast groundfish stocks to estimate species-specific F_{MSY} values. Taxon-specific proxy fishing mortality rates are used due to perceived differences in the productivity among different taxa of groundfish. A lower value is used for stocks with relatively high resilience to fishing while higher values are used for less resilient stocks with low productivity. In 2013 and 2014, the following default harvest rate proxies, based on the SSC's recommendations, were used: F_{30}% for flatfish, F_{50}% for rockfish (including thornyheads), and F_{45}% for other groundfish such as sablefish and lingcod.

For the 2013 and 2014 biennial specification process, eight stock assessments and four stock assessment updates were prepared. Full stock assessments, those that consider the appropriateness of the assessment model and that revise the model as necessary, were prepared for the following stocks: POP, widow rockfish, petrale sole, Dover sole, blackgill rockfish, sablefish, spiny dogfish, and greenspotted rockfish. Stock assessment updates, those that run new data through an existing model, were prepared for bocaccio, canary rockfish, darkblotched rockfish, and yelloweye rockfish. Because the bocaccio and darkblotched assessment updates encountered data anomalies, some modifications to the models were required and these were therefore not strictly updates.

Each new stock assessment includes a base model and two alternative models. The alternative models are developed from the base model by bracketing the dominant dimension of uncertainty (e.g., stock-recruitment steepness, natural mortality rate, survey catchability, recent year-class strength, weights on conflicting catch per unit effort series, etc.) and are intended to be a means of expressing uncertainty within the model by showing the contrast in management implications. Once a base model has been bracketed on either side by alternative model scenarios, capturing the overall degree of uncertainty in the assessment, a two-way decision table analysis (states-of-nature versus management action) is used to present the repercussions of uncertainty to decision makers. As noted above, the SSC makes recommendations to the Council on the appropriateness of using the different stock assessments for management purposes, after which the Council considers adoption of the stock assessments, use of the stock assessment for the development of rebuilding analysis, and the OFLs resulting from the base model runs of the stock assessments.

The following summaries pertain to the proposed 2013 and 2014 OFLs for stocks that were overfished in 2011.

Bocaccio (*Sebastes paucispinis*)

A stock assessment update was prepared for the bocaccio stock between the U.S.-Mexico border and Cape Blanco, OR. The bocaccio OFLs of 884 mt for 2013 and 881 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment update. For setting harvest specifications, six percent of the assessed biomass was estimated to occur north of 40°10′ N. lat. The projected OFLs from the assessment were adjusted accordingly.

Canary Rockfish (*Sebastes pinniger*)

A stock assessment update was prepared for the coastwide canary rockfish stock. The canary rockfish OFLs of 592 mt for 2013 and 741 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment update.

Darkblotched Rockfish (*Sebastes crameri*)

A stock assessment update was prepared for darkblotched rockfish in the U.S. Vancouver, Columbia, Eureka, and Monterey areas. The darkblotched rockfish OFLs of 541 mt for 2013 and 553 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment update.

Petrale Sole (*Eopsetta jordani*)

A new coastwide stock assessment was prepared for petrale sole. The assessment treats the U.S. petrale sole resource from the Mexican border to the Canadian border as a single coastwide stock. The petrale sole OFLs of 2,711 mt for 2013 and 2,774 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{30}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

POP (*Sebastes alutus*)

A new stock assessment was prepared for POP north of 40°10′ north latitude. This is the first full assessment of POP since 2003. The POP OFLs of 844 mt for 2013 and 838 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

Widow Rockfish (*Sebastes entomelas*)

A new coastwide stock assessment was prepared for widow rockfish in the U.S. Vancouver, Columbia, Eureka, Monterey, and Conception areas. The widow rockfish OFLs of 4,841 mt for 2013 and 4,435 mt for 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

Yelloweye Rockfish (*Sebastes ruberrimus*)

A coastwide stock assessment update was prepared for yelloweye rockfish. The yelloweye rockfish OFLs of 51 mt for 2013 and 2014 are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment update.

The following summaries pertain to the proposed OFLs for individually managed non-overfished stocks with new stock assessments or stock assessment updates in 2011.

Dover Sole (*Microstomus pacificus*)

A new coastwide stock assessment was prepared for Dover sole. The Dover sole OFLs of 92,955 mt in 2013 and 77,774 mt in 2014 are based on the F_{MSY} harvest rate proxy of F_{30}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

Sablefish (*Anoplopoma fimbria*)

A new coastwide stock assessment was prepared for sablefish. The sablefish OFLs of 6,621 mt in 2013 and 7,158 mt in 2014 are based on the F_{MSY} harvest rate proxy of F_{45}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

For individually managed species that did not have new stock assessments or updates prepared, the Council recommended OFLs derived from applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass from the most recent stock assessment or update, the results of rudimentary stock assessments, or the historical landings data approved by the Council for use in setting harvest specifications. These stocks include: Arrowtooth flounder, English sole, starry flounder, black rockfish south, black rockfish north, California scorpionfish, chilipeper rockfish south, longnose skate, longspine thornyhead Pacific cod, shortbelly rockfish, shortspine thornyhead, splitnose rockfish south, yellowtail rockfish, cabezon (off California), cabezon (off Oregon), and lingcod north and south. Proposed OFLs for these species can be found in Tables 1a and 2a.

There are currently eight stock complexes used to manage groundfish stocks pursuant to the PCGFMP. These stock complexes are: (1) Minor nearshore rockfish north; (2) minor shelf rockfish north; (3) minor slope rockfish north; (4) minor nearshore rockfish south; (5) minor shelf rockfish south; (6) minor slope rockfish south; (7) other flatfish; and (8) other fish. Stock complexes are used to manage the harvest of many of the unassessed groundfish stocks. The proposed OFLs for stock complexes are the sum of the OFL contributions for the component stocks, when known. For the 2013–2014 biennial specification process, similar to what was done in 2011–2012, Depletion-Corrected Average Catch (DCAC), Depletion-Based Stock Reduction Analysis (DB–SRA), or other SSC-endorsed methodologies were used to determine the OFL contributions made by category three species (data limited species). Stock assessment scientists from the Northwest Fisheries Science Center and the Southwest Fisheries Science Center developed the DCAC and DB–SRA methodologies. The DCAC and DB–SRA provide an estimate of sustainable yield for data-poor stocks of uncertain status. The Council and the SSC recognized these methods as improvements upon previous catch-based methods for estimating sustainable yield. While OFL contribution estimates should not vary from year to year for the category three stocks, a bias was discovered and corrected in both the DB–SRA and DCAC estimates. The 2011 estimates were generally biased somewhat high and the revised 2013 estimates were more precise. The corrected 2013 and 2014 OFL contribution estimates decreased an average of 6 percent relative to the 2011 estimates. For further information see *http://www.pcouncil.org/resources/archives/briefing-books/september-2011-briefing-book/#groundfish,* Agenda Item G.5.a Supplemental Attachment 8.

The proposed OFLs for complexes can be found at in tables 1a and 2a of this proposed rule. In addition to OFL contributions derived by DCAC, DB–SRA, or other SSC approved estimates, OFL contributions for the following stocks were determined by applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass from the most recent stock assessments: Blackgill rockfish, blue rockfish, chilipepper rockfish north, greenstriped rockfish, greenspotted rockfish, gopher rockfish, splitnose rockfish north, and spiny dogfish. As summarized below, three of the stocks with OFL contributions determined by applying the F_{MSY} harvest rate proxy to the estimated exploitable biomass from stock assessments had new stock assessments this cycle.

Blackgill Rockfish (*Sebastes melanostomus*)

A new stock assessment was prepared for the portion of the blackgill rockfish stock south of 40°10′ N. lat. Blackgill rockfish contributes 130 mt in 2013 and 134 mt in 2014 to the minor slope rockfish south OFL. The blackgill rockfish contributions to the 2013 and 2014 minor slope rockfish south OFLs are based on the F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

Greenspotted Rockfish (*Sebastes chlorostictus*)

A new assessment was prepared for the portion of the greenspotted rockfish

stock off California. The assessment modeled greenspotted rockfish as two independent stocks, one off southern California, and one off northern California. Greenspotted rockfish contributes 80.3 mt in 2013 and 80.3 mt in 2014 to the minor shelf rockfish south OFLs and contributes 15.5 mt in 2013 and 15.5 mt in 2014 to the minor shelf rockfish north OFLs. The greenspotted rockfish contributions to the 2013–2014 minor shelf rockfish south OFLs are based on a F_{MSY} harvest rate proxy of F_{50}% as applied to the estimated exploitable biomass from the 2011 stock assessment, and as apportioned to the minor shelf rockfish south complex. Greenspotted rockfish contributions to the 2013–2014 minor shelf rockfish north OFLs are based on the application of the of the same F_{MSY} harvest rate proxy as described above and as apportioned to the minor shelf rockfish north complex. The DCAC estimate of 6.1 mt for the portion of the greenspotted rockfish stock off Oregon and Washington also contributes to the minor shelf rockfish north OFLs.

Spiny Dogfish (*Squalus acanthias*)

A new coastwide stock assessment was prepared for spiny dogfish. Spiny dogfish contributes 2,980 mt in 2013 and 2,950 mt in 2014 to the other fish complex OFLs. Spiny dogfish contributions to the other fish complex OFLs are based on the F_{MSY} harvest rate proxy of F_{45}% as applied to the estimated exploitable biomass from the 2011 stock assessment.

Proposed ABCs for 2013 and 2014

The ABC is the stock or stock complex's OFL reduced by an amount associated with scientific uncertainty. The SSC-recommended P star-Sigma approach determines the amount by which the OFL is reduced to establish the ABC. Under this approach, the SSC recommends a sigma (σ) value. The σ value is generally based on the scientific uncertainty in the biomass estimates generated from stock assessments. After the SSC determines the appropriate σ value the Council chooses a P star (P*) based on its chosen level of risk aversion considering the scientific uncertainties. As the P* value is reduced, the probability of the ABC being greater than the ''true'' OFL becomes lower. In combination, the P* and σ values determine the amount by which the OFL will be reduced to establish the SSC-endorsed ABC.

The SSC has quantified major sources of scientific uncertainty in the estimate of OFL for category one stocks (stocks with relatively data-rich quantitative assessments) and recommended a σ value of 0.36. For category two stocks (stocks with relatively data-poor quantitative or non-quantitative assessments) the SSC recommended a σ value of 0.72 and for category three stocks (data-limited stocks with OFL contributions usually determined with DCAC or DB–SRA), the SSC recommend a σ value of 1.44. For stocks with data-poor stock assessments or no stock assessments (category two and three stocks), there is typically greater scientific uncertainty in the estimate of OFL. Therefore, the scientific uncertainty buffer is generally greater than that recommended for stocks with quantitative stock assessments. Assuming the same P* is applied, a larger σ value results in a larger reduction from the OFL.

For 2013 and 2014, the Council continued the general policy of using the SSC-recommended σ values for each species category. However, an exception to the general σ policy was made for widow rockfish. For widow rockfish, the SSC recommended a larger σ value of 0.41 rather than the 0.36 that would typically be used for category one stocks to better represent uncertainty in stock-recruit steepness, which is considered the major source of uncertainty in the widow rockfish assessment. In addition, several species changed categories in 2013–2014 as a result of updated stock assessments or due to being assessed for the first time. The σ value for these species was updated accordingly when determining the proposed ABCs for 2013 and 2014, as described below.

The species categories for yelloweye rockfish and blackgill rockfish south of 40°10′N. lat. were revised for 2013 and 2014 from category one to category two stocks. The yelloweye rockfish assessment was not able to estimate relative year class strength and the SSC recommended, yelloweye rockfish be considered a category two stock, and the σ value of 0.72 was used. Similarly, based on the stock assessment, the SSC recommended that blackgill rockfish be treated as a category two stock and the σ value of 0.72 was used. As a result of new stock assessments the species categories for spiny dogfish and greenspotted rockfish were revised for 2013 and 2014 from category three stocks to category two stocks. Accordingly, the σ values of 0.72 were used. Additional information about the σ values used for different species categories as well as the P*- σ approach can be found in the proposed and final rules from the 2011–2012 biennium. (75 FR 67810, November 3, 2010; 76 FR 27508, May 11, 2011). A discussion of the P* values used in combination with the σ values follows.

The PCGFMP specifies that the upper limit of P* will be 0.45. A P* of 0.5 equates to no additional reduction for scientific uncertainty beyond the sigma value reduction. A lower P* is more risk averse than a higher value, meaning that the probability of the ABC being greater than the ''true'' OFL is lower. For 2013 and 2014, the Council largely maintained the P* policies it established for the 2011–2012 biennium. Specifically, the Council recommended using P* values of 0.45 for all category one species, expect sablefish, which is described below. Combining the σ value of 0.36 the P* value of 0.45 results in a reduction of 4.4 percent from the OFL when deriving the ABC. For category two and three stocks, the Council's general policy was to use a P* of 0.4. When combined with the σ values of 0.72 and 1.44 for category two and three stocks, a P* value of 0.40 corresponds to 16.7 percent and 30.6 percent reductions, respectively.

The Council recommended more precautionary P* values in 2013–2014 for spiny dogfish and sablefish in order to account for uncertainty regarding the stock assessments. Spiny dogfish is a category two stock due to the model structure (fixed key parameters and no recruitment deviations) and sensitivity of the model results. The Council recommended a P* of 0.3 for spiny dogfish, which results in a 31.4 percent reduction from the OFL, in recognition of the uncertain catch history of the stock, which are largely discarded in west coast fisheries. The Council also expressed the need for precaution in managing spiny dogfish, pending a meta-analysis of elasmobranch F_{MSY} harvest rates due to the indication in the stock assessment that the current F_{MSY} harvest rate proxy of F_{45}% may be too aggressive. Regarding the 2011 sablefish assessment, the level of uncertainty in estimates of both depletion and absolute biomass is greater than in earlier assessments, in particular because allowance was made for uncertainty in key parameters such as natural mortality, growth, and survey catchability. Additionally, sablefish steepness cannot be estimated reliably given the currently available data, and steepness had to be set to an assumed value (0.6) in the assessment. Therefore, the Council recommended a P* of 0.4 for sablefish, which results in a 8.7 percent reduction from the OFL.

The Council also applied the two-step σ and P* approach for stocks managed in stock complexes. The Council's SSC categorized and applied the appropriate σ value for individual stocks managed in stock complexes. For the six minor rockfish complexes, which are

comprised of a mix of all three categories of stocks, the Council recommended a P* of 0.45. For the other flatfish, and other fish stock complexes, which is composed of category three stocks (except for spiny dogfish in the Other Fish which is category 2) a more precautionary P* of 0.40 was recommended. For each of the stock complexes, the component species ABC contributions were calculated and summed to derive the complex ABC. Tables 1a and 2a of this proposed rule present the harvest specifications for each stock and stock complex, including the proposed ABCs, while the footnotes to these tables describe how the proposed specifications where derived. Details regarding this can also be found in Chapter 2.1.2 of the DEIS (see Supplementary Information section above).

Proposed ACLs for 2013 and 2014

ACLs are specified for each stock and stock complex that is ''in the fishery''. An ACL is a harvest specification set equal to or below the ABC to address conservation objectives, socioeconomic concerns, management uncertainty, or other factors necessary to meet management objectives. All sources of fishing related mortality (tribal, commercial groundfish and non groundfish, recreational, and EFP), including retained and discard mortality, plus research catch are counted against an ACL. The ACL serves as the basis for invoking accountability measures (AMs). If ACLs are exceeded more than one time in four years, then improvements to or additional AMs, for example catch monitoring and inseason adjustments to fisheries, may need to be implemented.

Under the PCGFMP harvest policies, when a stocks depletion level falls below B_{MSY} or the proxy for $B_{MSY,}$ which is the biomass level that produces MSY (B_{25}% for assessed flatfish, B_{40}% for all other groundfish stocks), but is above the overfished level (MSST- $B_{12.5}$% for assessed flatfish, B_{25}% for all other groundfish stocks), the stock is said to be in the ''precautionary zone'' or below the precautionary threshold. In general, when recommending ACLs, the Council follows a risk-averse policy by recommending an ACL that is below the ABC when there is a perception the stock is below its $B_{MSY,}$ or to accommodate management uncertainty, socioeconomic concerns, or other considerations. When a stock is below the precautionary threshold the harvest policies reduce the fishing mortality rate. The further the stock biomass is below the precautionary threshold, the greater the reduction in ACL relative to the ABC, until at B_{10}% for a stock with a B_{MSY} proxy of B_{40}% or B_5% for a stock with a B_{MSY} proxy of B_{25}%, the ACL would be set at zero. These policies, known as the 40–10 and 25–5 harvest control rules, respectively, are designed to prevent stocks from becoming overfished and serve as an interim rebuilding policy for stocks that are below the overfished threshold. For stock complexes, the ACL is set for the complex in its entirety and is less than or equal to the sum of the individual component ABCs. The ACL may be adjusted below the sum of component ABCs to address the factors described above.

Under the PCGFMP, the Council may recommend setting the ACL at a different level than what the default ACL harvest control rule specifies as long as the ACL does not exceed the ABC and complies with the requirements of the MSA. The ACLs proposed for 2013–2014 are discussed below.

ACLs for ''Healthy'' and ''Precautionary Zone'' Individually Managed Species

For the following individually managed species there was no new scientific information or change in management policy from the 2011–2012 biennium for establishing 2013 and 2014 ACLs: arrowtooth flounder (ACLs set equal to the ABCs); black rockfish (OR–CA) (ACLs set below the ABCs); black rockfish (WA) (ACLs set equal to the ABCs); cabezon (CA) (ACLs set equal to the ABCs); cabezon (OR) (ACLs set equal to the ABCs); California scorpionfish (ACLs set equal to the ABCs); chilipepper south of 40°10′ N. lat. (ACLs set equal to the ABCs); English sole (ACLs set equal to the ABCs); longspine thornyhead north of 34°27′ N. lat. (ACLs set below the ABCs); longspine thornyhead south of 34°27′ N. lat. (ACLs set below the ABCs); Pacific cod (ACLs set below the ABCs); shortbelly rockfish (ACLs set below the ABCs); shortspine thornyhead north of 34°27′ N. lat. (ACLs set below the ABCs); shortspine thornyhead south of 34°27′ N. lat. (ACLs set below the ABCs); splitnose south of 40°10′ N. lat. (ACLs set equal to the ABCs); starry flounder (ACLs set equal to the ABCs); and yellowtail north of 40°10′ N. lat. (ACLs set equal to the ABCs).

The Council considered new policies or information relative to the ACLs for the following healthy and precautionary zone species: Dover sole, lingcod north of 42° N. lat., lingcod south of 42° N. lat., longnose skate, sablefish north of 36° N. lat., sablefish south of 36° N. lat., and widow rockfish.

Dover Sole

A new Dover sole assessment was done in 2011, which indicated the stock was healthy with a 2011 spawning stock biomass depletion of 83.7 percent of unfished biomass. Rather than set the ACLs equal to the ABCs of 88,865 mt in 2013 and 74,352 mt in 2014, the proposed 2013 and 2014 ACL of 25,000 mt is a re-specification of the 2012 ACL. The stock is projected to remain healthy while accommodating the current level of catch. Lower sablefish ACLs are proposed for 2013 and 2014 and, given that the trawl sablefish allocation can dictate the amount of Dover sole that can be accessed in the IFQ fishery, the Council did not recommend higher Dover sole ACLs.

Lingcod

Lingcod are distributed coastwide with harvest specifications based on two area stock assessments that were conducted in 2009 for the areas north and south of the California-Oregon border at 42° N. latitude. The stock assessments indicate west coast lingcod stocks are healthy with the stock depletion estimated for lingcod off Washington and Oregon to be at 62 percent of its unfished biomass, and lingcod off California estimated to be at 74 percent of its unfished biomass at the start of 2009. The lingcod ACLs for 2013–14 are being proposed for the areas north and south of the current 40°10′ N. lat. management line rather than north and south of the California-Oregon border (42° N. lat.), which is where the stock assessment splits the stocks. Current regulations at § 660.112(b)(1)(vii) prohibit vessels participating in the shorebased IFQ program from fishing in more than one IFQ management area on the same trip. Therefore, if lingcod were to have a geographic split at 42° N. lat. it would create a new IFQ management area that could unnecessarily restrict IFQ program participants. Dividing the lingcod specifications at 40°10′ N. lat. has no biological implications yet is consistent with the management of most other species with north-south specifications. The adjusted specifications for lingcod were based on the NMFS Northwest Fisheries Science Center trawl survey. The swept area biomass estimates calculated annually (2003–2010) in the NMFS Northwest Fisheries Science Center trawl survey indicated that 48 percent of the lingcod biomass for the stock south of 42° N. lat. occurred between 40°10′ N. lat. and 42° N. lat, and the specifications were adjusted accordingly. The 2013 and 2014 lingcod ACLs are 3,187 mt in 2013

and 3,023 mt in 2014 for the stock north of 40°10′ N. latitude and 1,111 mt in 2013 and 1,063 mt in 2014 for the stock south of 40°10′ N. lat., with the ACLs set equal to the ABCs.

Longnose Skate

The west coast longnose skate stock was assessed in 2007. The spawning stock biomass was estimated to be at 66 percent of its unfished biomass at the start of 2007. The Council considered two 2013 and 2014 longnose skate ACL alternatives. The alternatives were an ACL of 1,349 mt, which was the 2012 ACL and was based on a 50 percent increase in the average 2004–2006 total catch mortality, and an ACL of 2,000 mt. The Council recommended an ACL of 2,000 mt to accommodate the increased landings in the non-whiting trawl fishery seen in recent years and limit potential disruption of current fisheries. An ACL of 2,000 mt is well below the 2013 and 2014 ABCs for the stock of 2,774 mt and 2,692 mt. The proposed ACL is within a level of harvest projected to maintain the population at a healthy level as projected in the 10-year forecast for longnose skate in the 2007 stock assessment.

Sablefish

A new coastwide sablefish stock assessment was conducted in 2011. The spawning stock biomass was estimated to be at 33 percent of its unfished biomass at the beginning of 2011. Because the sablefish stock is in the precautionary zone with a stock biomass below the $B_{40\neq}$ target MSY biomass, the 40–10 harvest control rule was applied to the ABC to determine the proposed ACL. The coastwide ACL was then apportioned north and south of 36° N. lat., using the average 2003–2010 proportions derived from the swept-area biomass estimates of sablefish from the NWFSC shelf-slope trawl survey (73.6 percent north; 26.4 percent south). The apportionments used to determine 2013 and 2014 sablefish ACLs included updated information from the 2011 stock assessment. The proportions differ slightly from those used to apportion in 2012 ACLs.

To account for the uncertainty inherent in the abundance estimates of sablefish south of 36° N. lat. (due to the short time-series of survey data from the southern area and advisory body advice), the Council recommended southern area ACL apportionments that were reduced by 50 percent for 2011 and 2012. For 2013 and 2014, the SSC advised the Council that a fuller time series of trawl survey and catch data informing stock biomass in the Conception area reduced the scientific uncertainty in estimating biomass in that area in the 2011 assessment making the added 50 percent reduction unnecessary. The 2013 and 2014 proposed sablefish ACLs are 4,012 mt in 2013 and 4,349 mt in 2014 for the stock north of 36° N. lat. and 1,439 mt in 2013 and 1,560 mt in 2014 for the stock south of 36° N. lat. The ACLs are set below the ABCs based on the 40–10 harvest control rule. The 2013 and 2014 ACLs are a 25 percent reduction from the 2011–2012 ACLs for sablefish north of 36° N. lat. Sablefish is an economically important species in all commercial fisheries. The effects of the sablefish ACL on projected ex-vessel revenues in 2013 and 2014 are further discussed in the Classification section below.

Widow Rockfish

A new full assessment of widow rockfish was conducted in 2011. The new stock assessment indicated the spawning stock biomass was at 51 percent of its unfished biomass at the start of 2011 and above the rebuilding threshold. Beginning in 2013 and 2014, widow rockfish will be managed as a healthy stock. Although the base model is considered to be the best available science, there was considerable uncertainty regarding the new stock assessment's findings. The Council took this into consideration when making the ACL recommendations. For 2013–2014, the Council recommended ACLs of 1,500 mt to accommodate increased opportunity in the trawl fishery while keeping the spawning stock biomass above the target $B_{40\neq}$ level for the next 10 years according to the base model. The ACL of 1,500 mt adds more precaution given the uncertainty associated with the results of the stock assessment and is set below the ABC of 4,598 mt in 2013 and 4,212 mt in 2014.

ACLs for Stock Complexes

For the eight stock complexes managed under the PCGFMP, the Council recommended maintaining the 2013 and 2014 ACLs as close as possible to the 2012 ACLs. Maintaining ACLs as similar as possible to 2012 will help provide stability to fisheries in 2013 and 2014 while the trawl fishery continues to adjust to IFQ management and while NMFS and the Council consider changes to how stock complexes are structured. All of the ACLs for stock complexes are less than or equal to the summed ABC contribution of each component stock in each complex as described in the following paragraphs.

Minor Nearshore Rockfish North and South of 40°10′ N. Lat.

For minor nearshore rockfish north of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL is set equal to the ABC, at 94 mt each year. The 2013 and 2014 complex ABC is the summed contribution of the component stocks' ABCs. For minor nearshore rockfish south of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL of 990 mt is the same as the 2012 ACL and is less than the 2013 ABC for the complex.

Minor Shelf Rockfish North and South of 40°10′ N. lat.

For minor shelf rockfish north of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL of 968 mt is the same as the 2012 ACL and is less than the 2013 ABC of 1,920 and the 2014 ABC of 1,932 mt, for the complex. For minor shelf rockfish south of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL of 714 mt is the same as the 2012 ACL and is less than the 2013 and 2014 ABCs for the complex.

Greenspotted rockfish is managed within the minor shelf rockfish complexes. The 2011 assessment indicated the stock is in the precautionary zone with spawning biomass depletions of 30.6 percent and 37.4 percent for the stocks north and south of Point Conception, respectively. However, the stocks have shown substantial biomass increases since implementation of the rock fish conservation areas (RCAs) in 2003. Shelf rockfish are particularly well-protected by the RCAs, and greenspotted rockfish catches have been negligible since 2003.

Minor Slope Rockfish North and South of 40°10′ N. Lat.

For minor slope rockfish north of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL of 1,160 mt is the same as the 2012 ACL and is less than the 2013 ABC of 1,381 mt and the 2014 ABC of 1,414 mt, for the complex. For minor slope rockfish south of 40°10′ N. lat., the preferred 2013 and 2014 complex ACL is set equal to the ABC, at 618 mt in 2013 and 622 mt in 2014.

Blackgill rockfish is managed within the minor slope rockfish complexes. The 2011 assessment for the stock south of 40°10′ N. lat. indicated the stock was in the precautionary zone with spawning biomass depletion estimated to be 30 percent of its unfished biomass at the start of 2011. The Council recommended and NMFS is proposing to establish 2013 and 2014 HGs equal to the 40–10 adjusted ACLs calculated for the southern blackgill rockfish stock of 106 mt and 110 mt in 2013 and 2014, respectively.

Other Flatfish

The preferred 2013 and 2014 ACL for the other flatfish complex of 4,884 mt is equal to 2012 ACL. The 2013–2014 ACLs are set below the ABC of 6,982 mt.

Other Fish

The preferred 2013 and 2014 ACLs for the other fish complex of 4,717 mt and 4,697 mt, respectively, are equal to the preferred 2013 and 2014 ABCs, which are lower than the No Action 2012 ACL of 5,575 mt.

Spiny dogfish is managed within the other fish complex. The 2011 assessment indicated that spiny dogfish stock was healthy with an estimated spawning biomass at 63 percent of its unfished biomass. Although the Council initially considered managing spiny dogfish with a species specific harvest specifications, the final recommendation was to continue managing it within the other fish complex ACL for 2013 and 2014. Reconsideration of species specific specifications would be made in the 2015–2016 specifications cycle when a thorough analysis on complex management is expected to be completed as described below.

Stock Complex Composition

The Council and NMFS have recognized the need to revisit the composition of the stock complexes to ensure that stocks grouped together are sufficiently similar in geographic distribution, life history, productivity, and susceptibility to the fishery. However, recognizing that additional scientific work and management consideration is necessary to comprehensively address the issue, the Council recommended maintaining the current stock complexes for 2013 and 2014. NMFS is prioritizing completion of an analysis to inform changes to stock complexes in time for the 2015–2016 biennium due to information indicating that the harvest of some stocks may be out of proportion to their contribution to the complex specifications. The DEIS indicates that routine modifications to existing management measures could be effective at controlling catch of stock complexes if it becomes necessary.

Rebuilding Plan ACLs for Overfished Species

When a stock has been declared overfished a rebuilding plan must be developed and the stock must be managed in accordance with the rebuilding plan. ACLs for these stocks are therefore set according to the rebuilding plans. The following seven overfished groundfish stocks would be managed under rebuilding plans in 2013 and 2014: Bocaccio south of 40°10′ N. lat.; canary rockfish; cowcod south of 40°10′ N. lat.; darkblotched rockfish, Pacific Ocean Perch (POP), petrale sole, and yelloweye rockfish. Section 304(e)(4) of the MSA provides that any fishery management plan, plan amendment, or proposed regulations for rebuilding an overfished fishery shall: ''(A) specify a time period for rebuilding the fishery that shall—(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and (ii) not exceed ten years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictates otherwise'' (16 U.S.C. 1854(e)(4)).

The Council and NMFS rely on rebuilding analyses to develop rebuilding plans, particularly to determine the amount of time needed to rebuild stocks given varying levels of fishing mortality. An overfished groundfish stock is considered rebuilt once its biomass reaches B_{MSY}. Rebuilding analyses are used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to B_{MSY} (or its proxy) within a specified time frame. Life history characteristics (e.g., age of reproductive maturity, relative productivity at different ages and sizes, etc.) and the effects of environmental conditions on abundance (e.g., relative productivity under inter-annual and inter-decadal climate variability, availability of suitable food and habitat for different life stages, etc.) are taken into account in the stock assessment and the rebuilding analysis. A rebuilding analysis for an overfished species uses the information in the stock assessment for that species to determine T_{MIN}, the minimum time to rebuild to B_{MSY} with a 50 percent probability starting at the time the rebuilding plan was implemented, in the absence of fishing-caused mortality. Also included in the rebuilding analysis and rebuilding plan is $T_{F=0}$ which is the minimum time to rebuild to B_{MSY} with a 50 percent probability in the absence of fishing-caused mortality starting from the beginning of the next biennial cycle, in this case 2013. The value of $T_{F=0}$ is therefore, in effect, T_{MIN} based on our current understanding of the stock. For purposes of this section and its description of the canary rockfish and POP rebuilding plans, $T_{F=0}$ can thus be considered as T_{MIN}. The rebuilding analyses are used to predict T_{MIN} for each overfished species and, in doing so, answer the question of what time period for rebuilding is ''as short as possible'' for each of the overfished species. The amount of time between T_{MIN} and the target rebuilding year (T_{TARGET}), is used to measure the time period that the MSA requires to be as ''short as possible,'' when taking into account the required factors, including the needs of fishing communities. The T_{TARGET} parameter is discussed in more detail below.

T_{TARGET} is the year in which the Council expects the stock to rebuild with at least a 50 percent probability under the chosen rebuilding strategy and is set between T_{MIN} and T_{MAX}. T_{MAX} is T_{MIN} plus the length of time associated with one mean generation time for that stock. A particular T_{TARGET} is determined by the productivity of the stock, its current status, and the allowable harvest associated with a particular rebuilding strategy established based on consideration of the required factors. To rebuild a stock by the T_{MIN} date would require elimination of human-induced mortality on a stock (the complete absence of fishing mortality is referred to as F=0). Even if incidental fishing mortality of overfished species, that occurs as the result of fishing for target groundfish species is ended, this does not necessarily result in the complete absence of human-induced fishing mortality. To rebuild by the T_{MIN} date would require elimination of extractive scientific research, such as surveys, in addition to any target or incidental commercial, recreational, or ceremonial and subsistence fishing that results in overfished species mortality. Eliminating extractive scientific research would eliminate a significant portion of the data used to inform stock assessments and better understand the biological condition of groundfish stocks. Thus, the Council's rebuilding strategies allow for these sources of scientific research-related mortality. Also, as discussed above, the MSA requires that rebuilding plans take into account the needs of fishing communities. The rebuilding strategy for each overfished stock, and the resulting T_{TARGET}, is determined in consideration of the statutory factors.

When an SPR harvest rate is used as the rebuilding strategy, the Council's preference is to maintain a constant SPR harvest rate during the rebuilding period for a stock, if appropriate. The

SPR is the expected lifetime contribution to the spawning stock biomass for a recruit (a fish of specific spawning age or greater). Harvest rates are presented in terms of the SPR. This is a percent value indicating an effective harvest rate that would return the population to a given level of spawning potential (reproductive output) in relation to the spawning potential of the unfished population. The SPR harvest rate specifies the proportion of the spawning stock that can be removed each year while allowing the stock to rebuild by T_{TARGET} and inherently takes into account the productivity of the stock. The harvest rate, or harvest control rule, determines the ACLs for overfished species. The exploitation pattern, rate of growth, and natural mortality can be given consideration when calculating an SPR harvest rate. Applying a constant SPR harvest rate is more precautionary in an uncertain environment as it reduces the effect of changes in variability in the scale of biomass (a change in the entire trajectory of biomass from the first biomass estimate forward to the current biomass estimate). When a new stock assessment results in a change in the understanding of stock scale or absolute stock abundance, a constant harvest rate strategy is expected to keep the stock on track towards rebuilding. In addition, the ''rebuilding paradox'' (the fishing interaction for a stock increases as the stock biomass increases) is addressed within a constant SPR approach. This is because the ACL would change in relation to changes in biomass. In contrast, constant catch rebuilding strategies do not adjust in relation to changes in biomass, which can be problematic when there is a downward change in abundance. In this case, the catch may become too large relative to the size of the biomass population and adjustments would become necessary to meet the same T_{TARGET}. Although the biennial management cycle requires focus on ACLs for a two year period, an SPR harvest strategy is based on a rebuilding trajectory over time. For stocks with slow trajectories, the differences between two alternatives considered during a single biennial management cycle need to be compared in relation to how they rebuild the stock over time.

As explained in the preamble to the proposed specifications and management measures for the 2011–2012 biennium (75 FR 67810, November 3, 2010), new information or changes in perception of stock status and biology can result in variability in stock assessments and rebuilding analyses. In some cases, this variability requires revisions to existing rebuilding plans in order to account for new estimates of T_{MIN}. Given the changes in perception of stock status and biology, the Council tracks rebuilding progress in three dimensions: Stock productivity; absolute stock abundance or stock scale; and relative stock abundance or stock status. Stock productivity is referred to as recruitment and means the ability of a stock to generate new individuals of harvestable size. Stock scale is the total number of individuals in a population. This value is rarely known, but is usually estimated from relative abundance or through other methods. Absolute stock abundance is an estimate of the current biomass usually measured by indices that track trends in population biomass over time. Stock status is the current biomass relative to the unfished biomass. Each of these dimensions is subject to considerable scientific uncertainty and can change the overall rebuilding outlook from cycle to cycle. To determine whether a stock is better or worse off compared to a previous assessment, all three dimensions must be examined. Changes in the understanding of stock productivity can affect rebuilding plans by altering our perception of how quickly a stock can increase. Changes in our understanding of life history traits (e.g. mortality, maturity, fecundity, or growth) can change the evaluation of stock productivity. In the case of many groundfish, recruitment is highly variable and sporadic or poorly understood. Age or length data, along with survey biomass estimates and removal histories, all inform recruitment patterns, but to varying degrees of resolution. The most recent few years of recruitment are often the most uncertain.

Absolute stock abundance, or stock scale, has also demonstrated considerable variability across assessments. This variability is often a result of uncertainty in catch histories, which scales the biomass via estimates of fishing mortality, but is also sensitive to life history parameters such as growth and mortality. Any changes in these estimates can have large effects in perceived biomass. These changes in scale are commonly seen in estimates of unfished biomass, as the scale of the entire population trajectory can shift up or down. Changes in population scale will affect the level of catch needed to achieve the rebuilding goals if harvest levels are not based on harvest rates. Stock status or depletion is expressed as an estimate of current biomass relative to the estimate of unfished biomass. Importantly, changes in the estimate of unfished biomass can change with new data, even though the current population biomass stays the same. Likewise, as more data becomes available on productivity in current years it may alter our understanding of current year biomass relative to an unfished biomass. Because stock status is the basis for determining when a stock is rebuilt, subsequent estimates of when a stock is projected to rebuild at a specific SPR may change as estimates of stock status change.

For two stocks, POP and canary rockfish, new scientific information revealed that it is unlikely that the stocks can be rebuilt by their current T_{TARGET} even if all catch of these stocks was prohibited. To avoid disastrous short-term consequences for fishing communities, harvest levels above the T_{MIN} level were considered. Section 4.5.3.2 of the PCGFMP provides the following general guidance on the needs of the fishing communities: ''Fishing communities need a sustainable fishery that: is safe, well-managed, and profitable; provides jobs and incomes; contributes to the local social fabric, culture, and image of the community; and helps market the community and its services and products.'' Because so many of the groundfish stocks are intermixed in different proportions, making adjustments to protect one stock may increase the mortality of other stocks. This intermixing makes rockfish rebuilding plans particularly challenging. Reducing catch of overfished rockfish indirectly affects fishing opportunity by constraining the harvest of target stocks in multiple commercial and recreational fishery sectors. The Council has approached this challenging situation using a comprehensive approach to analyzing rebuilding alternatives and impacts to fishing communities by taking into account the biology of the stocks and the needs of fishing communities in a holistic fashion that simultaneously considers all rebuilding species and groundfish fishing sectors.

The EIS prepared for this action analyzed a range of POP and canary rockfish ACLs arrayed in different configurations along with the ACLs for other stocks and the management measures needed to prevent ACLs from being exceeded. These ''integrated alternatives'' are designed to help demonstrate how changes in POP and canary rockfish ACLs affect access to target stocks or influence projected mortalities of overfished species, among other factors. Because of the multispecies nature of the groundfish fishery (the ACL of one species can

influence the ACL and/or access to another species), the choice of canary rockfish and POP harvest rates, and the resulting ACLs and $T_{TARGETS}$, were carefully considered by the Council. In their final recommendation, the Council weighed many factors including rebuilding progress, biology of the stock, economic impacts, allocations, and the need for new or more restrictive management measures. Ultimately, the Council recommended maintaining the harvest rate in the existing rebuilding plans for POP and canary rockfish and establishing revised $T_{TARGETS}$, and maintaining the existing rebuilding plans, including the $T_{TARGETS}$, for the other five overfished species. The proposed SPR or harvest control rule for each stock managed under a rebuilding plan, the resulting ACLs, and summarized information about rebuilding progress are presented below. Detailed information is also available in the relevant stock assessments, stock assessment updates, rebuilding analyses, and the EIS for this action, which are all available from NMFS and the Pacific Fishery Management Council (See **SUPPLEMENTARY INFORMATION**).

Bocaccio

The 2011 rebuilding analysis indicated that bocaccio is showing steady progress towards rebuilt status under the current rebuilding plan described in 50 CFR 660.40(a). Applying the current rebuilding harvest control rule to new information from the 2011 stock assessment update, the rebuilding analysis projects bocaccio to rebuild to B_{MSY} one year earlier than the T_{TARGET} of 2022 specified in the current rebuilding plan.

When an SPR harvest rate of 77.7 percent from the current rebuilding plan is applied to the biomass estimate from the 2011 assessment update, it results in the proposed ACLs of 320 mt in 2013 and 337 mt in 2014. Because rebuilding progress is considered adequate, and the 2011 assessment update supports our fundamental understanding of the stock, the Council's recommendation was to maintain the rebuilding plan currently in the FMP and 50 CFR 660.40(a) (i.e., no modifications to T_{TARGET} or SPR harvest rate).

Canary Rockfish

The 2011 rebuilding analysis indicated that the point estimate for the canary rockfish biomass is slightly below the rebuilding trajectory from the previous (2009) rebuilding analysis. The estimated unfished spawning biomass increased by 7 percent resulting in a change in the depletion estimate (the metric used to gauge stock status expressed as the ratio of current to unfished spawning biomass) from 23.7 to 23.3 percent. Given changes in the relative status and productivity of the canary rockfish stock, the median time to rebuild the canary rockfish stock in the absence of fishing, $T_{F=0}$, would be 2028, which is one year longer than the T_{TARGET} of 2027 specified in the current rebuilding plan at 50 CFR 660.40(b). Because the canary rockfish stock cannot rebuild by the current T_{TARGET} of 2027 even in the absence of fishing, the rebuilding plan must be modified.

The No Action or 2012 ACL for canary rockfish is 107 mt. Given the results of the 2011 stock assessment update and rebuilding analysis, the No Action ACL corresponds with an SPR of 89.5 percent and a median time to rebuild of 2030. In addition to the No Action ACL, the Council considered five ACLs that extend the median time to rebuild by one, two, three and four years from $T_{F=0}$. The additional ACLs included: 48 mt in 2013 and 49 mt in 2014, which corresponds to a median time to rebuild of 2028 and an SPR of 95.1 percent; 101 mt in 2013 and 104 mt in 2014, which corresponds to a median time to rebuild of 2029 and an SPR of 90 percent; 116 mt in 2013 and 119 mt in 2014, which corresponds to a median time to rebuild of 2030 and an SPR of 88.7 percent; 147 mt in 2013 and 151 mt in 2014, which corresponds to a median time to rebuild of 2030 and an SPR of 85.9 percent; and, 216 mt in 2013 and 220 mt in 2014, which corresponds to a median time to rebuild of 2030 and an SPR of 80.3 percent.

The ACLs of 116 mt in 2013 and 119 mt in 2014 were included in integrated alternatives one and three and would maintain the Council's existing policies and the SPR specified in the existing rebuilding plan (88.7 percent). Although estimates of unfished biomass increased for canary rockfish, the increase was relatively small compared to the increase in estimated unfished biomass for POP (discussed below). In addition, the estimated ending year spawning biomass increased. Due to the estimated increase in population size and different assumption used in the most recent rebuilding analysis about the relative catch by different gear types, the 2013–2014 ACLs resulting from the SPR 88.7 percent harvest rate are slightly higher than the No Action ACLs. The ACLs of 101 mt in 2013 and 104 mt in 2014 were included in integrated alternatives two and six and are most similar to the 2012 ACL (No Action ACL). The ACLs of 48 mt in 2013 and 49 mt in 2014, included in integrated alternative four, are the most restrictive, and are similar to the OYs that were in place between 2003 and 2008. The alternative five ACLs of 216 mt in 2013 and 220 mt in 2014, and the alternative seven and alternative eight ACLs, which are the same, of 147 mt and 151 mt, are increases that are expected to provide increased fishing opportunity particularly for widow rockfish.

Despite very restrictive management measures being in place from 2003 to 2008 (prior to implementation of the trawl rationalization program, for more information on this program see 75 FR 78344, December 15, 2010 and 75 FR 60868, October 1, 2010), total mortality of canary rockfish exceeded the OYs in every year during this time period except in 2008. Effectively controlling catch of canary rockfish has proven difficult, particularly at low harvest levels that were in place between 2003 and 2008. The low canary rockfish ACL alternative, alternative four, would require a combination of shortened recreational fishing seasons or lower commercial fishery trip limits, and depth restrictions. Providing a higher ACL as under alternatives five, seven, or eight could allow some fishing effort to shift off of the slope areas resulting in reduced catch of POP.

The Council's recommended ACLs are 116 mt in 2013 and 119 mt in 2014, which maintains the current SPR harvest rate of 88.7. The target rebuilding year for canary rockfish is changed by three years (from 2027 to 2030). However, the target rebuilding year is only two years longer than $T_{F=0}$; the same length of time as in the previous rebuilding plan. Under the 2011 rebuilding analysis, the probability of rebuilding to T_{TARGET} in 2030 using an SPR harvest rate of 88.7 percent is 54.6 percent (see *http://www.pcouncil.org/wp-content/uploads/D5b_SUP_GMT_JUN2012BB.pdf*). The preferred ACLs are intended to provide a level of harvest that rebuilds quickly, yet takes into account the needs of fishing communities. Also, the proposed management measures and catch allocations are projected to result in canary rockfish total catch mortality less than the annual ACLs. Managing the fishery to a level that is less than the annual ACLs is intended help ensure total mortality stays below the ACL, to allow the stock to rebuild faster, and to reduce the likelihood that inseason management changes will be needed to ensure that ACLs are not exceeded.

Cowcod

The proposed 2013 and 2014 harvest specifications are consistent with the current rebuilding plan. No new assessment was done for cowcod because there was not enough new

information on which to base an assessment. However, rebuilding progress is considered adequate, the Council's recommendation was to maintain the rebuilding plan currently in the FMP, and at 50 CFR 660.40 (i.e., no modifications to T_{TARGET} of 2068 or SPR harvest rate). The three mt ACLs proposed for 2013 and 2014 are based on an SPR harvest rate of 82.7 percent and result in a median time to rebuild of 2068, which is eight years longer than $T_{F=0}$. As in previous biennial harvest specifications, the Conception area ACL was doubled as an appropriate harvest contribution for the unassessed Monterey area.

Darkblotched Rockfish

The 2011 rebuilding analysis indicates that darkblotched rockfish is showing steady progress towards rebuilding under the current rebuilding plan (50 CFR 660.40(d)). The revised estimates from the new rebuilding analysis indicate that darkblotched rockfish will rebuild to B_{MSY} eight years earlier than the T_{TARGET} of 2025 specified in the current rebuilding plan if the existing harvest control rule (SPR = 64.9 percent) remains in place. The proposed ACLs of 317 mt in 2013 and 330 mt in 2014 result from application of the SPR harvest rate of 64.9 percent to information from the 2011 stock assessment and has a median time to rebuild of 2017, which is one year longer than $T_{F=0}$. Because the rebuilding progress indicated in the 2011 assessment and rebuilding analysis was considered adequate, and supports our fundamental understanding of the stock, the Council recommendation was to maintain the rebuilding plan currently in the FMP and regulation (i.e., no modifications to T_{TARGET} or SPR harvest rate).

Petrale Sole

The 2011 stock assessment and rebuilding analysis projected the petrale sole biomass to be at 18 percent of its unfished biomass and showing strong progress towards rebuilt status. The new rebuilding analysis estimates that petrale sole will rebuild to B_{MSY} three years earlier than the T_{TARGET} of 2016 specified in the current rebuilding plan if the 25–5 harvest control rule included in the rebuilding plan continues to be used as the rebuilding strategy. The ACLs derived by applying the 25–5 harvest control rule and being proposed are 2,592 mt and 2,652 mt in 2013 and 2014, respectively. The minimum time to rebuild petrale sole is 2014 (T_{MIN}). The ACLs derived from the 25–5 harvest control rule are projected to rebuild the stock by 2013, the same year as $T_{F=0}$. Because the rebuilding progress was considered adequate, and the 2011 assessment supports our fundamental understanding of the stock, the Council recommendation was to maintain the rebuilding plan currently in the FMP and at 50 CFR 660.40(f) (i.e., no modifications to T_{TARGET} or harvest control rule).

POP

The 2011 rebuilding analysis showed the POP biomass to be below the rebuilding trajectory from the previous (2009) rebuilding analysis. The change is primarily due to a revised estimate of initial unfished biomass (B_0) and depletion, rather than a change to the current biomass level. The new estimate of unfished stock size is higher than previously thought. This represented a fundamental revision to our understanding of the status of this species, which in turn warranted revisions to the rebuilding plan. Even if harvest of POP were prohibited (F=0) the median time to rebuild would be 2043, which is 23 years past the current T_{TARGET} of 2020.

The No Action or 2012 ACL for POP is 183 mt. In 2012, an annual catch target (ACT) of 157 mt was also specified. In addition to the No Action ACL and ACT, the Council considered four ACLs for the 2013–14 cycle that would extend the median time to rebuild beyond $T_{F=0}$ by three, eight, 14, and 17 years. The alternative ACLs considered by the Council included: 74 mt in 2013 and 76 mt in 2014, which corresponds to a median time to rebuild of 2046 and an SPR of 92.9 percent; 150 mt in 2013 and 153 mt in 2014, which corresponds to a median time to rebuild of 2051and an SPR of 86.4 percent; 222 mt in 2013 and 226 mt in 2014, which corresponds to a median time to rebuild of 2057 and an SPR or 80.9 percent; and, 247 mt in 2013 and 251 mt in 2014, which corresponds to a median time to rebuild of 2060 and an SPR or 79.2 percent.

The Council considered this broad range of POP ACL alternatives in order to examine the effects of varying levels of POP mortality on the ''needs of fishing communities'' and the POP rebuilding trajectory. The ACLs of 150 mt in 2013 and 153 mt in 2014 were included in integrated alternatives one, two, and eight and would maintain the SPR harvest rate policy in the existing rebuilding plan (86.4 percent). The ACLs of 74 mt in 2013 and 76 mt in 2014 were included in integrated alternatives three and five and are similar to the lowest single year (2005) catch seen since 2004. The alternative four ACLs of 247 mt and 251 mt are the most liberal followed by alternative six and seven with ACLs of 222 mt in 2013 and 226 mt in 2014. The larger ACL alternatives would allow targeting opportunity for widow rockfish and increases in the harvest of Pacific whiting. POP is a slope rockfish species that is primarily taken in the trawl fishery. Generally, lower ACLs for POP would reduce the flexibility of trawl vessels to fish deeper when targeting Pacific whiting and non-whiting stocks on slope fishing grounds north of 40°10′ N. lat. In recent years, POP catch has increased later in the season when the Pacific whiting fishery operated deeper and more northerly than earlier in the season. However, the bulk of POP catch is taken in the bottom trawl sector and has increased in recent years as more effort has shifted to areas seaward of the trawl RCA. For the commercial and tribal fisheries, the primary common factor limiting commercial groundfish fisheries under integrated alternatives one, two, three, five, seven, and eight were the POP ACLs under each alternative. In other words, management measures necessary to keep the commercial fisheries within the POP ACLs limited access to other stocks under alternatives one, two, three, five, seven, and eight. This was not the case for alternative four because of the higher POP ACL and the very low canary rockfish ACL. Under alternative four, canary rockfish becomes the limiting factor and even more effort is shifted offshore.

The Council has recommended maintaining the rebuilding strategy in the current rebuilding plan, with an SPR harvest rate of 86.4 percent, resulting in ACLs of 150 mt in 2013 and 153 mt in 2014. This is a reduction from the 2012 POP ACL of 183 mt. The revised T_{TARGET} is 2051, which is eight years longer than $T_{F=0}$. The proposed management measures and catch allocations for 2013 and 2014 are projected to result in POP total catch mortality less than the annual ACLs. Managing the fishery to a level that is less than the annual ACLs is intended to help ensure total mortality stays below the ACL, to allow the stock to rebuild faster, and to reduce the likelihood that inseason management changes will be needed to keep mortality within the ACL. The ACL for POP has the greatest effect on the northern trawl fishery (both the at-sea whiting sectors and the shorebased IFQ sector).

Yelloweye Rockfish

The 2011 rebuilding analysis indicates that yelloweye rockfish is showing steady progress towards rebuilt

status under the current rebuilding plan. The new rebuilding analysis estimates that yelloweye rockfish will rebuild to B_{MSY} seven years earlier than the T_{TARGET} of 2074 specified in the current rebuilding plan if the existing harvest control rule (SPR = 76.0 percent) remains in place. The proposed ACL of 18 mt in 2013 and 2014 results from applying an SPR harvest rate of 76.0 percent to current biomass and has a predicted median time to rebuild of 2067 (yelloweye rockfish now has 62.1 percent probability of rebuilding by the T_{TARGET} specified in the current rebuilding plan. Because rebuilding progress was considered adequate, and the assessment supports our fundamental understanding of the stock, the Council recommended maintaining the rebuilding plan currently in the FMP and at specified at § 660.40 (i.e., no modifications to T_{TARGET} or SPR harvest rate).

Management Measures

New management measures being proposed for the 2013–2014 biennial cycle would work in combination with management measures in existing regulations to create a management structure intended to control fishing. This management structure should ensure that the catch of overfished groundfish species does not exceed the rebuilding ACLs while allowing harvest of healthier groundfish stocks to occur to the extent possible. Routine management measures are used to modify fishing behavior during the fishing year. Routine management measures for the commercial fisheries include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Routine management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. The groundfish fishery is managed with a variety of other regulatory requirements that are not routinely adjusted, many of which are not changed through this rulemaking, and are found at 50 CFR 660, subparts C through G. The regulations at 50 CFR 660, subparts C through G, include, but are not limited to, long-term harvest allocations, recordkeeping and reporting requirements, monitoring requirements, license limitation programs, and essential fish habitat (EFH) protection measures. The routine management measures specified at 50 CFR 660.60 (c), in combination with the entire collection of groundfish regulations, are used to manage the Pacific Coast groundfish fishery during the biennium to achieve harvest guidelines, quotas, or allocations, that result from the harvest specifications identified in this proposed rule, while protecting overfished and depleted stocks.

This section describes biennial fishery allocations and new management measures proposed for 2013–2014 including: changes to latitude and longitude coordinates that define the boundaries of the Rockfish Conservation Areas (RCA)s; the ability to routinely modify deductions from the ACL to provide fishing opportunities but not exceed ACLs; requirements to completely offload before starting a new trip; updating sorting requirements; and management measures to control the harvest, if needed, of longnose skate and spiny dogfish.

Biennial Fishery Allocations

Two-year trawl and nontrawl allocations are decided during the biennial process for those species without long-term allocations or species where the long-term allocation is suspended because the species was declared overfished. For all species, except sablefish north of 36° N. lat., allocations for the trawl and nontrawl sectors are calculated from the fishery harvest guideline. The term ''fishery harvest guideline'' is defined at § 660.11, and is the tonnage that remains after subtracting from the ACL, or ACT when specified, harvest in Tribal fisheries, scientific research activities, non-groundfish fisheries and activities conducted under exempted fishing permits. The two-year allocations and recreational harvest guidelines are designed to accommodate anticipated mortality in each sector as well as to accommodate variability and uncertainty in those estimates of mortality. Allocations described below are specified in the harvest specification tables appended to part 660, subpart C.

Longnose Skate

The Council recommended a two-year trawl and nontrawl HG for longnose skate of 90 percent to the trawl fishery and 10 percent to the nontrawl fishery. The allocation percentages reflect historical catch of longnose skate between the two sectors.

Bocaccio

The following are the Council's recommended allocations for bocaccio in 2013: Limited entry trawl, 76.9 mt; limited entry and open access non-nearshore fixed gears, 74.2 mt; limited entry and open access nearshore fixed gear, 0.9 mt; and California recreational 167.9 mt. The following are the Council's recommended allocations for bocaccio in 2014: Limited entry trawl, 79.8 mt; limited entry and open access non-nearshore fixed gears, 77 mt; limited entry and open access nearshore fixed gear, 0.9 mt; California recreational 174.2 mt. These allocations are anticipated to accommodate estimates of mortality of bocaccio by sector in 2013–2014.

Canary Rockfish

The following are the Council's recommended allocations for canary rockfish in 2013: Shorebased IFQ Program, 40.3 mt; at-sea sectors of the Pacific whiting fishery, 12.8 mt (catcher/processor 7.5 mt and mothership 5.3 mt); limited entry and open access non-nearshore fixed gears, 3.6 mt; limited entry and open access nearshore fixed gear, 6.2 mt; Washington recreational, 3.1 mt; Oregon recreational 10.9 mt; and California recreational 22.6 mt. The following are the Council's recommended allocations for canary rockfish in 2014: Shorebased IFQ Program, 41.5 mt; at-sea sectors of the Pacific whiting fishery, 13.2 mt (catcher/processor 7.7 mt and mothership 5.5 mt); limited entry and open access non-nearshore fixed gears, 3.7 mt; limited entry and open access nearshore fixed gear, 6.4 mt; Washington recreational, 3.2 mt; Oregon recreational 11.2 mt; and California recreational 23.3 mt. These allocations are anticipated to accommodate estimates of mortality of canary rockfish by sector in 2013–2014.

Cowcod

The trawl/non-trawl allocations of cowcod for the first years of the IFQ fishery were 66 percent to the trawl fishery and 34 percent to the non-trawl fisheries. The trawl fishery had a higher allocation to account for the uncertainty in how much cowcod IFQ fishery participants would encounter. Catch of cowcod in the IFQ fishery during 2011 was only 39 pounds while best available estimates for cowcod catch in non-trawl fisheries was almost 1 mt. If the non-trawl allocation is not increased, and catches of cowcod continue at levels similar to those estimated for 2011, trip limit reductions and/or RCA modifications may be required in southern California to address the higher-than-expected catch levels in non-trawl fisheries. Rather than imposing such restrictions, the Council recommended a change in the allocation, making less cowcod available to trawl fisheries and more available to non-trawl fisheries. The cowcod allocation is proposed to be 34 percent trawl and 66 percent non-trawl for 2013–2014. NMFS anticipates the proposed allocation structure will keep

catch below the 2013–2014 cowcod ACLs without having to make changes to fishery management measures.

Minor Shelf Rockfish

For minor shelf rockfish north of 40°10′ N. lat., 560 mt (60.2 percent of the fishery harvest guideline) is allocated to the trawl fishery and 370 mt (39.8 percent of the fishery harvest guideline) is allocated to the nontrawl fishery for 2013 and 2014. For minor shelf rockfish south of 40°10′ N. lat., 82 mt (12.2 percent of the fishery harvest guideline) is allocated to the trawl fishery and 587 mt (87.8 percent of the fishery harvest guideline) is allocated to the nontrawl fishery for 2013–2014. For both minor slope rockfish north and minor slope rockfish south, this maintains the same allocation percentages as were in place for these complexes in 2012.

Petrale Sole

For petrale sole, 35 mt is allocated to the nontrawl fishery and the remainder of the fishery HG is allocated to the trawl fishery. This maintains the same allocation scheme that was in place for petrale sole in 2012.

Yelloweye Rockfish

The following are the Council's recommended allocations for yelloweye rockfish in 2013 and 2014: limited entry trawl, 1 mt; limited entry and open access non-nearshore fixed gears, 1.1; limited entry and open access nearshore fixed gear, 1.2; Washington recreational, 2.9; Oregon recreational 2.6 mt; and California recreational 3.4 mt. These allocations are anticipated to accommodate estimates of mortality of yelloweye by sector in 2013–2014.

Modifications to the Boundaries Defining RCAs

RCAs are large area closures intended to reduce the catch of a species or species complex, by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. A set of coordinates define lines that approximate various depth contours. These sets of coordinates, or lines, in and of themselves, are not gear or fishery specific, but are used in combination to define an area. That area may then be described with fishing restrictions implemented for a specific gear and/or fishery (e.g., between the boundary line approximating the 75 fm depth contour and the boundary line approximating the 150 fm depth contour is the trawl RCA, and fishing with bottom trawl gear is prohibited in this area). For the 2013–2014 cycle, changes to refine selected coordinates to more closely approximate the depth contour are being proposed for the 150 fm line off Washington, the 200 fm line off Washington and Oregon and the 150 fm line defining the Usal and Noyo Canyons off California. These changes refine the lines that approximate the depth contours and makes no regulatory changes to how, or for which fisheries, those lines may be used.

Deductions From the ACL

Background

Before allocations are made to groundfish fisheries, deductions are made from ACLs to set fish aside fish for certain types of activities. The deductions from the ACL are associated with four distinct sources of groundfish mortality: Harvest in Pacific Coast treaty Indian tribal fisheries; harvest in scientific research activities; harvest in non-groundfish fisheries; and harvest that occurs under exempted fishing permits (EFPs). These deductions from the ACL are described at § 660.55(b) and specified in the footnotes to Tables 1a and 2a to subpart C. Under current regulations if any of these sources came in under the amounts deducted from the ACL, for example because a research activity was canceled, the leftover was generally not available to other fisheries. In order to make any unharvested fish available for harvest in other sectors, the Council recommended formalizing a process for allowing groundfish that are set aside for harvest in scientific research, non-groundfish fisheries, and for EFPs, to be harvested in other groundfish fisheries if those fish would otherwise go unharvested (fish unharvested in the tribal fisheries are not part of this change). In order to keep the public informed about these changes, any movement of fish from the deductions from the ACL to other fisheries will be announced in the **Federal Register**. This additional flexibility for 2013–2014, and beyond, is intended to allow unused yield to be redistributed to other sectors of the groundfish fishery, as needed.

This rule proposes revising regulations to allow more flexibility and is not proposing changes to how set-asides that come off an allocation for a specific fishery are managed. Additionally, for clarity this rule makes changes to definitions and descriptions at § 660.55(k), § 660.55(b) and (b)(4) to distinguish between off the top deductions and set-asides.

To implement this change the Council recommended and NMFS is proposing to allow the non-tribal deductions from the ACL for any groundfish species to be modified inseason, however this movement of fish is discretionary and not automatic. Therefore, the Council will consider various factors before recommending that fish be moved from the non-tribal deductions from the ACL, including: Status of the activities for which the yield was initially intended and the level of certainty that there will be unharvested fish; potential benefits to groundfish fishery sectors; risk of exceeding ACLs; and other appropriate factors. For 2013–2014, the Council recommended that fish that would go unharvested be available to be distributed among the sectors in proportion to the allocations made at the start of the year, but that the Council may make modifications to those proportions based on sector needs. The Council will consider various factors when making recommendations for changing the proportions by which fish would be distributed including: Whether sectors are closed and additional fish would not provide enough yield to re-open the fishery; whether sectors are not anticipated to catch their existing allocation of the species that is to be redistributed; and the timing and feasibility of how additional yield could be released to and used by a given sector. Allowing changes to the proportions based on sector needs will help maximize the socioeconomic benefits of moving unused yield into a fishery sector.

Regulations that describe routine management measures, at § 660.60(c), and that describe the types of deductions that are made from the ACL, at § 660.55(b), are proposed to be revised to allow the non-tribal deductions from the ACL to be modified as a routine action.

Special consideration must be made for the shorebased IFQ program because these species are allocated differently than non-IFQ species. An IFQ species that has yield available may be made available for harvest in the Shorebased IFQ Program. Shorebased IFQ program participants would be notified of any changes through the **Federal Register**. NMFS is proposing regulations to allow quota pounds (QP) made available after September 1 due to changes in the non-tribal deductions from the ACL to be transferred from a quota share (QS) account to a vessel account in a similar manner as Pacific whiting reapportionment: NMFS will credit the QS account with additional QP proportionally, based on the increase in the shorebased trawl allocation; the QS account transfer function will be reactivated for species with additional

QP; and after December 15 the transfer function will again be inactivated. Therefore, changes to regulations at § 660.140(d)(3)(ii)(B)(*3*) are proposed to expand the regulations for Pacific whiting reapportionment after September 1 so they may also apply to QP that are released to the Shorebased IFQ Program due to changes in the non-tribal deductions from the ACL.

QP made available to the Shorebased IFQ Program from the non-tribal deductions from the ACL will count towards calculations for accumulation limits: Both QS and QP accumulation limits. Any movement of fish from the deductions from the ACL into the Shorebased IFQ Program would change allocations, and therefore would also affect the individual amounts associated with the QS and QP accumulation limits. There would be no change in the percentage that applies; the existing percentage would be applying to a larger poundage that may result in a higher poundage at the individual level.

In contrast, QP made available to the Shorebased IFQ Program from the non-tribal deductions from the ACL will not count towards calculations for carryover. The Pacific whiting final rule (77 FR 28497, May 15, 2012, comment 15) addressed this issue in the context of reapportionment of whiting to the Shorebased IFQ Program. Any release of additional QP resulting from deductions from the ACL is similar to reapportionment of whiting in that both may be added to the shorebased trawl allocation during the year but were not part of the annual allocation. Because reapportionment of whiting is not included in the calculation for the carryover limit in the Shorebased IFQ Program, and because release of additional QP is a similar provision, NMFS proposes that that release of additional QP resulting from changes to the non-tribal deductions from the ACL would also not count toward the carryover limit. Language has been added to § 660.140(e)(5) stating that these additional amounts do not count toward calculation of the carryover limit. No changes to the regulations at § 660.140(e)(5)(ii) regarding deficit carryover are proposed. Therefore, if a vessel has already opted out of the fishery, it would not have the option of covering its deficit with the additional QP that were released due to changes to the non-tribal deductions from the ACL. Also at § 660.140(e)(5)(i), NMFS proposes clarifying language stating that surplus carryover QP or IBQ pounds are deposited straight into vessel accounts and do not change the shorebased trawl allocation.

Offloading Requirements

The trawl rationalization program, in part, implemented sector allocations and the management measures to track catches against those sector allocations. Initially, regulations were established for the shorebased IFQ fishery such that, once the transfer of fish begins, all fish on board a vessel count toward a landing and the offload must be completed prior to the start of a subsequent trip. The purpose of this measure was to ensure all fish harvested on a shorebased IFQ trip were clearly associated with the landings receipts and permit status. The information on the landing receipts, combined with the permit status of the vessel making the landing, provides fishery managers with the tools to accurately account for catch against the sector allocation. During development of the 2013–2014 harvest specifications and management measures, the Council and NMFS identified a need for similar offloading requirements in other sectors of the fishery to ensure accurate catch accounting between other sector allocations.

At its June 2012 meeting, the Council recommended a change to regulations that would require all fish from any trip be offloaded prior to beginning a new trip. Based on that recommendation, every sector of the groundfish fishery, including landings in the limited entry fixed gear and open access fisheries, and would be required to completely remove all fish from the vessel once landing had begun, in order for them to be allowed to start a subsequent trip. Therefore, in particular, NMFS is seeking comments from participants in the limited entry fixed gear and open access sectors, on the proposed action to require all fish from any trip, except for vessels fishing in the at-sea sectors of the Pacific whiting fishery, be offloaded prior to beginning a new trip.

While developing regulations for this new requirement, NMFS noted that the complete offloading requirements for the shorebased IFQ program that are currently in place do not apply to vessels participating in the primary whiting fishery as part of the mothership or catcher/processor sectors. However, there is already a provision at § 660.112(d)(8) requiring MS CVs to offload all catch to a single MS before resetting the net. Therefore, NMFS is not proposing changes to the offload requirements for the mothership or catcher/processor sectors.

Sorting Requirements

In the non-whiting groundfish fishery, catch is sorted to species or species group in order to account for catch against the various harvest specifications and management measures that are specific to those species or species groups. Except for vessels participating in the Pacific whiting fishery (see § 660.130(d)(2)(ii) and (d)(3)), groundfish regulations require that species or species groups with a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY, be sorted (see § 660.12(a)(8)). Whenever a new species is given its own harvest specification or management measure, as described in the list above, that species must then be sorted. For the first time, blackgill rockfish is given a species specific harvest guideline for the area south of 40°10′ N. lat.; therefore, blackgill rockfish would need to be sorted in all fisheries, except the Pacific whiting fishery, beginning in 2013.

Longnose Skate Management Measures

Longnose skate were assessed for the first time in 2008 and in the 2009–2010 harvest specifications and management measures longnose skate was removed from the ''other fish'' complex and given its own species specific harvest specifications. At that time, mortality estimates from the stock assessment were below the harvest specifications and the concern for overfishing was extremely low so no new management measures were established. Since longnose skate is not an IFQ species, the 2011–2012 harvest specifications and management measures established an incidental landing limit for the Shorebased IFQ Program as a management tool. However, as a precautionary measure for 2013 and 2014, the Council recommended that trawl and non-trawl harvest guidelines be specified for longnose skate. Therefore, this proposed rule reflects a fishery harvest guideline for longnose skate of 1,927.8 mt, of which the trawl harvest guideline is 90 percent (1,735 mt), and the non-trawl harvest guideline is 10 percent (192.8 mt) in 2013 and 2014. For vessels using trawl gear, landing limits for the non-IFQ species, including longnose skate, are published in Table 1 (North) and Table 1 (South) to subpart D. Also for 2011–2012, longnose skate was added to the list of species for which trip landing and frequency limits, and size limits could be implemented or modified routinely for the Shorebased IFQ Program.

According to West coast groundfish observer program (WCGOP) data available at the end of 2011, the estimates of longnose skate total mortality in 2009 and 2010 approached or slightly exceeded the longnose skate

OYs in those years, depending on the assumptions made about discard mortality. The assumptions made about discard mortality of longnose skate have varied, with 100 percent discard mortality assumed by WCGOP but the stock assessment assumed 50 percent discard mortality. Since the 2008 stock assessment has been recommended as the best available science by the SSC, the SSC has also recommended that the discard mortality rate that is assumed in the stock assessment be used by WCGOP. So, if one were to apply the best available discard mortality assumption of 50 percent retroactively, longnose skate mortality would have been approximately 88 percent of the 2009 and 2010 OYs. However, the Council considered that total mortality, regardless of the assumptions in discard mortality, has an increasing trend and recommended that management measures, including trip limits and depth-based area restrictions to control or reduce fishery impacts to longnose skate be designated as routine for all fisheries to allow fishery managers to respond to the best available fishery data during the year and take action to make sure that total mortality of longnose skate does not exceed the 2013–2014 ACLs. Therefore, the Council recommended and NMFS is proposing to add longnose skate to the list of species for which trip landing and frequency limits, and size limits could be implemented or modified routinely for all fisheries.

Lingcod Management Measures

Minimum size limits for lingcod have been in place since the late 1990s. Minimum size limits were used as a rebuilding tool to decrease harvest and improve stock status after lingcod was declared overfished in 1999. The lingcod stock was declared rebuilt in 2005. The Council considered reducing or removing the minimum size limit for lingcod in the shorebased IFQ fishery because all of the catch counts against a vessel's IFQ, and fish that are smaller than the minimum size limit are still considered marketable but are required to be discarded. However, the Council's Enforcement Consultants (EC) recommended that if the Council made changes to lingcod minimum size limits in the IFQ fishery that they make the same changes to the non-IFQ fisheries. Because of the concerns raised by the EC, the Council recommended no changes to lingcod size limits for any commercial or recreational fisheries for the start of the 2013–2014 biennium. However, the Council requested additional analysis of the environmental effects of reducing or eliminating the minimum lingcod size limit for non-IFQ commercial as well as recreational fisheries. The Council may use this analysis in combination with the most recently available fishery information to make changes to lingcod minimum size limits during the biennium. Changes to lingcod size limits are considered a routine measure under § 660.60(c) and may be implemented, if determined necessary, through inseason action.

Spiny Dogfish Management Measures

Spiny dogfish are a component stock in the ''other fish'' complex, and have species specific trip limits in commercial groundfish fisheries. Mortality of spiny dogfish in recent years has approached, and would have exceeded in 2008, the 2013–2014 level of the contribution of this stock to the ''other fish'' ABC. Therefore, the Council considered management measures that could be implemented, if needed, to decrease catch of spiny dogfish inseason.

Catch of spiny dogfish in each sector of the groundfish fishery has been highly variable, but they are most commonly encountered by vessels fishing for groundfish with bottom trawl gear, midwater trawl gear, or with fixed gear seaward of the non-trawl RCA (also referred to as the non-nearshore fishery). Of these fisheries, two have targeted and sold spiny dogfish: The bottom trawl and non-nearshore fixed gear fisheries. Therefore, if changes to management measures were necessary to reduce catch, they would primarily focus on bottom trawl and non-nearshore fixed gear fisheries (both limited entry and open access fixed gear). Based on a review of catch estimates, landings data, price per pound, and current fishery management measures that are likely affecting the harvest levels of spiny dogfish, the Council recommended no changes to fishery management measures for the start of the biennium, but noted that adjustments to spiny dogfish trip limits and changes to RCA boundaries would be effective tools to control catch, if needed inseason.

Limited Entry Trawl

Trawl Fishery Management Measures

Amendment 20 established a program to ''rationalize'' the groundfish limited entry trawl fishery. Rationalization results in a sustainable level of fishing from both the resource conservation and economic perspective through the use of harvest shares and cooperatives. The program under the PCGFMP uses quota shares, or catch allocation, to allow individuals to harvest specific amounts of groundfish. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch (retained and discarded).

Since the start of 2011, the limited entry trawl fishery has been divided into three distinct sectors (shoreside, mothership, and catcher/processor). An individual fishing quota (IFQ) program is created for the shoreside sector and harvester cooperatives are created for the catcher/processor and mothership sectors. Formal allocations to and among the trawl sectors to support the trawl rationalization program are specified in the PCGFMP and in federal Pacific coast groundfish regulations at 50 CFR 660, Subparts C and D.

The PCGFMP framework specifies formal, long term, allocations between trawl and non-trawl fisheries for many groundfish species including: lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch (POP), widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10′ N. lat., shortspine thornyhead (north and south of 34°27′ N. lat.), longspine thornyhead north of 34°27′ N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10′ N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and other flatfish. Species that are not formally allocated by the PCGFMP are addressed through short-term allocations, decided through the biennial harvest specifications and management measure process. Trawl and non-trawl allocations are established through the biennial harvest specifications for canary rockfish, bocaccio, cowcod, yelloweye rockfish, and minor shelf rockfish north and south. In addition to allocations specified by the PCGFMP and those mentioned above, trawl and non-trawl allocations for some additional species are being specified through the biennial harvest specifications including: Minor nearshore rockfish north and south, and longnose skate. Species being managed under trip limits and without trawl and non-trawl allocations are: Shortbelly rockfish, longspine thornyhead south of 34°27′ N. lat., black rockfish (Washington-Oregon), California scorpionfish, cabezon (California only), kelp greenling, and the ''other fish'' complex.

Carry-Over

The Shorebased IFQ Program contains a carryover provision that is specified at 50 CFR part 660.140(e)(5). The carryover provision allows for two types of

carryover. If an individual catches more fish than is in their corresponding vessel account, but it is within the 10 percent carryover limit for a deficit, then this overage in one year can be covered by the following year's QP—called a deficit carryover. Likewise, the provision also allows up to 10 percent of QP that were not used in one year to be carried over into the following year—called a surplus carryover. Each year NMFS is required to determine whether each species can be issued surplus carryover to individual vessel accounts within the conservation requirements of the Magnuson-Stevens Act. The use of the deficit carryover provision is the choice of the vessel account owner and does not require a direct role for NMFS.

Beginning in 2013, the Council is recommending a process in which the Council (rather than NMFS) would review in the first instance the eligible surplus carry-over amounts from the previous year, projected mortality for the current year, and available AMs to determine whether issuing the eligible surplus carry-over QPs would likely result in exceeding an ACL. If a concern is identified, the Council would make recommendations to NMFS to reduce or eliminate the surplus carryover for the species in question for that year. The ability to modify the surplus carry-over percentages through routine inseason action is different from the No Action option where adjustments are made by NMFS under MSA authority or by the Council through the biennial cycle. Considering the amount of surplus carryover as an inseason action would increase the Council's involvement. NMFS is proposing that the percentage of surplus carryover may be modified as a routine action, though the percentage may not exceed 10 percent.

As an example of how the process might work, the Council would review the preliminary data available from the previous year beginning in the spring and could make recommendations to NMFS after any Council meeting, but likely after the March or April meeting. The Council could recommend the surplus carryover limit be adjusted through an inseason action published in the **Federal Register** to a percentage lower than 10 percent for any individual IFQ species or all IFQ species (the deficit carryover limit would remain at 10 percent). If surplus carryover is not issued for any species (i.e., 0 percent), that would be included in the **Federal Register** notice.

Surplus carryover credits would function differently than increases to sector allocations. Increases in sector allocations (e.g., allocation top-ups, reapportionment of whiting, and flexibility of deductions from the ACL), would be added to the shorebased trawl allocation, added to the QS accumulation limits and vessel limits calculations, and allocated to QS accounts. However, the surplus carryover credit to the shorebased sector would not be added to the shorebased trawl allocation, and would not be added to the vessel accumulation limit calculation. Rather, NMFS would credit the amount directly to vessel accounts.

NMFS is also proposing that issuance of surplus carryover to vessel accounts will be restricted by the vessel limits (annual and daily limits). Annual and daily vessel limits are set at a percentage. Any increase to the sector allocation during the calendar year, due to adjustments in the non-tribal deductions from the ACL, allocation top-ups in the spring, and whiting reapportionment in the fall, would increase the associated QP amount for those daily and annual vessel limits (as well as the QS accumulation limits). Before any credit of surplus carryover QP to vessel accounts, fishermen may want to estimate their surplus carryover and then look at their vessel account balances to determine whether they would be able to accept their entire surplus carryover credit. Fishermen may be faced with fluctuating surplus carryover limits if the percentage is changed inseason. Fishermen may also face fluctuating vessel limits caused by increasing allocations.

To ensure that issuance of surplus carryover would not cause overfishing, and would be extremely unlikely to exceed an ACL, the Council also recommended modifying the regulations to allow the Shorebased IFQ Program to be closed automatically. However, NMFS already has the authority in current regulations § 660.140(a)(3) to close all or part of the Shorebased IFQ Program. Therefore, NMFS is not proposing to add an automatic action to close the Shorebased IFQ Program.

Incidental Trip Limits for IFQ Vessels

For vessels fishing IFQ, with either groundfish trawl gear or non-trawl gears, the following incidentally caught species are managed with trip limits: Minor nearshore rockfish north and south, black rockfish, cabezon (46°16′ to 42° N. lat. and south of 42° N. lat.), spiny dogfish, shortbelly rockfish, Pacific whiting, and the ''other fish'' category. If determined necessary, trip limits may also be established for longnose skate, California scorpionfish, and as sub-limits within the other fish category, big skate, California skate, leopard skate, soupfin shark, finescale codling, Pacific rattail, kelp greenling, and cabezon off Washington. No changes to trip limits in the IFQ fishery are proposed for the start of the 2013–2014 biennium; however, changes to trip limits are considered a routine measure under § 660.60(c) and may be implemented, if determined necessary, through inseason action.

RCA Configurations for Vessels Using Groundfish Trawl Gear

Based on analysis of West Coast Groundfish Observer Data and vessel logbook data, the boundaries of the RCAs were developed to prohibit groundfish fishing within a range of depths where encounters with overfished species were most likely to occur. The RCAs boundaries vary by season, latitude, and gear group. Boundaries for limited entry trawl vessels are different from those for the limited entry fixed-gear and open access gears. The trawl RCAs apply to vessels fishing with groundfish trawl gear. The non-trawl RCAs apply to the limited entry fixed-gear and open access gears other than non-groundfish trawl. The non-groundfish trawl RCAs are defined by fishery.

Under Amendment 20 to the PCGFMP, quota pounds associated with a limited entry trawl permit may be harvested with either trawl gear or legal fixed gear. Groundfish regulations specify both trawl and non-trawl RCAs. The type of gear employed determines the RCA structure. As such, vessels that harvest IFQ species with groundfish trawl gear will be held to the trawl RCA while vessels that harvest IFQ species with fixed gear will be held to the non-trawl RCA.

No changes to the 2012 trawl RCA boundaries are proposed for the start of the 2013–2014 biennium. As the IFQ fishery proceeds and if catch data supports reconsideration of the RCAs, the Council could revise the RCA boundaries through inseason measures.

Changes to Lingcod QP and QS Accumulation Limits

Because of the geographic split for lingcod at 40°10′ N. lat., changes to the tables that describe the QS control limits at § 660.140(d)(4)(i)(C) and the QP vessel limits at § 660.140(e)(4)(i) are proposed in this rule. Consistent with current regulations the QS control limit percent is equally split between north and south and the percentages remain the same, i.e. the previous limit was 2.5 percent coastwide and this rule proposes a 2.5 percent limit north and a 2.5 percent limit south of 40°10′ N. lat. QP vessel use limits proposed in this rule are 5.3 percent north of 40°10′ N. lat. and 13.3 percent south of 40°10′ N.

lat. The changes would provide vessels an opportunity to harvest the same amount of lingcod north and south of 40°10′ N. lat. that would have been available had the coastwide lingcod quota not been split. It was noted at the Council's June meeting that the QS accumulation limits may also need to be revisited in light of the change in the geographic split being proposed for lingcod; however, NMFS is not proposing changes to QS accumulation limits at this time. Likewise, the aggregate non-whiting groundfish species QS accumulation limit and QP vessel limits may also need to be revisited in light of the change in the geographic split being proposed for lingcod; however, NMFS is not proposing changes at this time.

Limited-Entry Fixed Gear and Open Access Non-Trawl Fishery Management Measures

Management measures for the limited entry fixed gear (LEFG) and open access non-trawl fisheries tend to be similar because the majority of participants in both fisheries use hook-and-line gear. Management measures, including area restrictions and trip limits, in these non-trawl fisheries are generally designed to allow harvest of target species while keeping catch of overfished species low. For 2013–2014, changes to management measures in these fisheries are primarily driven by the lower sablefish ACL for the area north of 36° N. lat. The Council also considered the tradeoffs in area restrictions compared to trip limit restrictions for the non-trawl fishery that is prosecuted shoreward of the non-trawl RCA.

Non-Trawl RCAs

The non-trawl RCA applies to vessels that take, retain, possess, or land groundfish using non-trawl gears, unless they are incidental fisheries that are exempt from the non-trawl RCA (e.g. the pink shrimp non-groundfish trawl fishery). The seaward and shoreward boundaries of the non-trawl RCAs vary along the coast, and are divided at various commonly used geographic coordinates, defined in § 660.11, subpart C. In 2009, the shoreward boundary of the non-trawl RCA was established based on fishery information indicating that fishing in some areas in the non-trawl fishery have higher yelloweye rockfish bycatch than in others, and the RCA boundaries were adjusted to reduce mortality of yelloweye rockfish in these areas.

The non-trawl RCA boundaries proposed for 2013–2014 are the same as those in place for the non-trawl fisheries in 2011–2012, except for the shoreward boundary of the non-trawl RCA off a small part of the southern Oregon coast. The shoreward boundary of the non-trawl RCA, between 43° N. lat. (Columbia/Eureka line) and 42° N. lat. (Oregon/California border), is proposed to be shifted seaward, to open some additional areas to fishing close to shore. Under the final preferred allocations for canary and yelloweye rockfish for 2013–2014, bycatch species that limit access to targeted nearshore stocks, and with the trip limits for nearshore species that were in place during 2011–2012 remaining the same, some additional fishing opportunities can be provided while keeping anticipated mortality of canary and yelloweye rockfish below the nearshore fishery allocations. Therefore, the Council recommended and NMFS is proposing to shift the shoreward boundary of the non-trawl RCA, between 43° N. lat. and 42° N. lat., from the line approximating the 20 fm (37 m) depth contour to the line approximating the 30 fm (55 m) depth contour. These boundary lines are defined by latitude and longitude coordinates found at § 660.71, subpart C. The change to the non-trawl RCA boundary in this area opens fishing areas that have been closed since 2009, and may increase fishing efficiency and reduce gear conflicts by spreading the nearshore fleet over a larger fishing area. Opening this area is anticipated to increase overall landings of both target and bycatch species, but mortality is anticipated to be below the allocations or harvest limits for all species.

Non-Trawl Fishery Trip Limits

Trip limits proposed for the non-trawl fisheries in 2013–2014 are similar to those that applied to these fisheries in 2011–2012 with the exception of the addition of species-specific limits for blackgill rockfish south of 40°10′ N. lat. To help achieve but not exceed the allocations of sablefish in the limited entry fixed gear and open access fisheries, proposed trip limits for sablefish in these fisheries are different between 2013 and 2014, with slightly higher limits in 2014 because of the higher sablefish ACL. Proposed 2013 and 2014 trip limits for sablefish in the non-trawl fisheries are specified in Table 2 (North), Table 2 (South) to subpart E and in Table 3 (North) and Table 3 (South) to subpart F.

Blackgill rockfish is a species in the slope rockfish complex, coastwide, and was assessed in 2011. For 2013–2014, blackgill rockfish will have species-specific harvest guidelines for the area south of 40°10′ N. lat. of 106 mt and 110 mt for 2013 and 2014, respectively. To improve inseason tracking of catch and keep anticipated catch of blackgill rockfish within its harvest guideline, species specific sub-limits are proposed for the non-IFQ fisheries. For the limited entry fixed gear fishery south of 40°10′ N. lat., a species-specific sub-limit is established, within the minor slope rockfish limit, for blackgill rockfish of 1,375 lb (653 kg) per two months. For the open access fishery south of 40°10′ N. lat., a species-specific sub-limit is established, within the minor slope rockfish limit, for blackgill rockfish of 480 lb (217 kg) per two months. These trip limits, when combined with anticipated catch of blackgill rockfish in the Shorebased IFQ Program, are anticipated to keep catch below the 2013 and 2014 harvest guidelines. For the Shorebased IFQ Program, blackgill rockfish will remain a part of the minor slope rockfish south of 40°10′ N. lat. complex.

Primary Sablefish Fishery Tier Limits

Some limited entry fixed gear permits are endorsed to receive annual sablefish quota, or ''tier limits,'' and vessels registered with one, two, or up to three of these permits may participate in the primary sablefish fishery, described at § 660.231. Tier limits proposed for the limited entry fixed gear primary sablefish fleet are lower than in 2011–2012, reflecting the lower sablefish harvest specifications for 2013 and 2014. The proposed tier limits are as follows: In 2013, Tier 1 at 34,513 lb (15,665 kg), Tier 2 at 15,688 lb (7,116 kg), and Tier 3 at 8,964 lb (4,066 kg). For 2014, Tier 1 at 37,441 lb (16,983 kg), Tier 2 at 17,019 lb (7,720 kg), and Tier 3 at 9,725 lb (4,411 kg). These tier limits are found in groundfish regulations at § 660.231, Subpart E.

Management measures for the LEFG fishery are found at § 660.230, subpart E, with management measures specific to the primary sablefish season found at § 660.231, subpart E. Limited entry fixed gear trip limits are found in Table 2 (North) and Table 2 (South) of subpart E of part 660. Management measures for the open access fishery are found at § 660.330, subpart F. Trip limits for the open access fishery are found in Table 3 (North) and Table 3 (South) of subpart F of part 660.

Transitioning Between the Limited Entry Fixed Gear Primary Sablefish Fishery and the Daily Trip Limit (DTL) Fishery

After vessels participating in the limited entry fixed gear primary sablefish fishery have fished their tier limit(s), they are then eligible to fish in the sablefish fishery that is subject to

trip limits, also known as the daily trip limit (DTL) fishery. Prior to 2009, the threshold by which it was determined when a vessel's primary fishery season was completed was equal to the daily trip limit in place for the limited entry fixed gear DTL fishery. In 2009, the daily trip limit in the limit entry fixed gear DTL fishery was removed. Removal of the daily limit in the limited entry fixed gear DTL fishery incidentally also changed the threshold by which completion of the vessels tier was judged, to the weekly rather than daily limit that was in place. Therefore, language is added to remedy the unintended threshold change that was made because of removal of the daily limit. Proposed revised regulations set a 300 lb (136 kg) threshold for the amount of sablefish that is left on a tier limit when no daily limit is specified.

Recreational Fisheries Management Measures

Recreational fisheries management measures are designed to limit catch of overfished and nearshore species to sustainable levels while also allowing viable fishing seasons. Overfished species that are taken in recreational fisheries include bocaccio, cowcod, canary, and yelloweye rockfish. Because sport fisheries are more concentrated in nearshore waters, the 2013–2014 recreational fishery management measures are intended to constrain catch of nearshore species such as minor nearshore rockfish, black rockfish, blue rockfish, and cabezon. These protections are particularly important for fisheries off California, where the majority of West Coast recreational fishing occurs. Management measures for the California recreational groundfish fishery are designed to reduce the incidental catch of overfished rockfish, primarily yelloweye and canary rockfish, while providing fishing opportunity for anglers targeting groundfish. Depth restrictions and RCAs are the primary tools used to keep overfished species impacts under the prescribed harvest levels for the California recreational fishery.

Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits, to best fit the requirements to rebuild overfished species found in their regions, and the needs and constraints of their particular recreational fisheries, including responding to a very strong recruitment event of bocaccio.

Recreational fisheries management measures for Oregon in 2013–2014 are proposed to be very similar to the recreational fishery management measures that were in place off Oregon during 2011–2012. Recreational fisheries off northern California, Oregon, and Washington are limited by the need to reduce yelloweye rockfish impacts. Changes to recreational fishery management measures off California are in response to: New methods for estimating harvest specifications for data limited species; recent stock assessment information indicating a very strong recruitment of juvenile bocaccio rockfish in California; and the desire to broadly redistribute effort displaced by restrictions on fishing in Marine Protected Areas (MPAs) in state waters.

Washington

Off Washington, recreational fishing for groundfish and Pacific halibut will continue to be prohibited inside the North Coast Recreational YRCA, a C-shaped closed area off the northern Washington coast, the South Coast Recreational YRCA, and the Westport Offshore YRCA. Coordinates for YRCAs are defined at § 660.70. The RCA for recreational fishing off Washington will be the same as in 2012. The aggregate groundfish bag limits off Washington will continue to be 12 fish. The rockfish and lingcod sub-limits will remain the same as in 2011–2012: 10 rockfish sub-limit with no retention of canary or yelloweye rockfish; 2 lingcod sub-limit, with the lingcod minimum size of 22 inches (56 cm). Since catches of cabezon have increased in recent years and the stock status of cabezon off the Washington coast is unknown, and to make cabezon retention regulations off the West Coast consistent with WDFW regulations in Puget Sound, this rule continues a cabezon sub-limit for 2013–2014 of two cabezon per day. The lingcod seasons in 2013–2014 will be slightly changed from those in 2011–2012, due to minor fluctuations in differences between calendar years. Similar to 2012, this proposed rule includes a Washington State lingcod recreational fishing closure area off Washington Marine areas 1 and 2, a portion of which are closed to lingcod fishing, except on days that the primary halibut fishery is open.

Oregon

Off Oregon, recreational fishing for groundfish in 2013–2014 will have the same management measures as in 2011–2012, and the Oregon recreational fishery marine fish bag limit will continue to have a seasonal sub-bag limit for cabezon, as described at § 660.360(c)(2)(iii). The seasonal sub-bag limit for cabezon is intended to reduce the projected impacts to cabezon in the Oregon recreational ocean boat fishery in order to stay within the recreational portion of the 2013 and 2014 cabezon ACLs for Oregon of 50 mt and 48 mt, respectively.

California

For 2013–2014, recreational fisheries off California will continue to be managed as five separate areas, to reduce complexity while retaining flexibility in minimizing impacts on overfished stocks. California recreational management areas and regulations can be found at § 660.350(c)(3). Minor changes are proposed to the California recreational regulations to make references to management areas consistent.

California updated its recreational fisheries catch model with data from the California Recreational Fisheries Survey to make recommendations to the Council for the 2013–2014 fisheries. Season and area closures differ between California regions to better prevent incidental catch of overfished species according to where those species occur and where fishing effort is greatest, while providing as much fishing opportunity as possible. The California-wide combined bag limit for the Rockfish-Cabezon-Greenling (RCG) Complex will continue to be 10 fish per day when the season is open. RCG Complex sub-bag limits will also remain largely the same, including the cabezon statewide limit of three fish per day, with a few exceptions pertaining to kelp greenling and bocaccio.

Kelp greenling in California is managed as part of the Other Fish complex, while its harvest specifications contribute to the complex as a whole. The ACL contribution for kelp greenling was substantially increased in 2011–12 based on new methods for estimating harvest specifications for data limited species. However, more conservative state regulations including a total allowable catch (TAC) of 17 mt currently govern the catch of kelp greenling in California. A revised kelp greenling contribution to the other fish complex was analyzed and adopted for use in management in 2011–2012 (2011–2012 FEIS), and the kelp greenling contribution to the Other Fish complex increased for 2013–2014. In order to conform to the higher federal ACL contribution, California State will be implementing a higher recreational kelp greenling bag limit and increasing from two fish to 10 fish. No changes to the minimum size limit are proposed. No additional impacts are expected on overfished species compared to 2011–2012, because kelp greenling are

commonly encountered in shallower depths and more than 50 percent of the catch comes from shore anglers. Increased mortality as a result of this action could be accommodated with low risk of exceeding a harvest guideline, specifically, the kelp greenling contribution to the complex.

There is a very strong year class of bocaccio entering the recreational fishery, as evidenced from the updated 2011 stock assessment, and increased encounters of bocaccio entering the fishery in 2012. In order to reduce unnecessary discarding as a result of increased encounters with the new year-class entrants, the changes to California recreational bocaccio management measures being proposed are to: Remove the recreational bocaccio size limit; increase the recreational bag limit for bocaccio; and allow shelf rockfish retention in the Cowcod Conservation Area, excluding bronzespotted, canary, cowcod and yelloweye rockfish, from 0–20 fathoms when the season is open to fishing.

Bocaccio are the only rockfish subject to a recreational size limit (10 inches), which was initially implemented in 2000. Since 2000, managers have additional data, which suggests that the size limit has been ineffective in reducing mortality. Bocaccio has shown steady progress toward rebuilding under the current rebuilding plan, and application of the constant harvest rate in the current rebuilding plan corresponds with an ACL for 2013–2014 that is larger than the ACL in recent years. Length data from the California Recreational Fisheries Survey (CRFS) from 2005 to 2010 was used to analyze the projected mortality of bocaccio as a result of removing the recreational size limit, which is only expected to increase total bocaccio mortality by 0.36 percent (0.2 mt), and the projected subsequent mortality can be accommodated within the higher proposed 2013–2014 ACLs and HGs. Under this proposed rule, recreational anglers will be allowed to retain all bocaccio, regardless of size, while abiding by current depth and season restrictions. This action will reduce regulatory complexity for a fishery that already has many regulations; the overall mortality of bocaccio is expected to be minimal, and no additional mortality of overfished species is expected.

There will also be an increase in the recreational bag limit for bocaccio in this proposed rule. The bocaccio recreational HGs are higher in 2013–2014 (163.5 mt and 172.5 mt, respectively) than in 2012 (131 mt). Currently for 2012, recreational anglers are allowed two bocaccio within a 10 fish Rockfish, Cabezon, Greenling (RCG) complex bag limit. Because bocaccio have a high susceptibility to barotrauma in depths of 40 fathoms or greater, anglers are often required to discard and therefore fish longer to achieve their 10 fish bag limit, which in turn can have the undesired effect of increasing the likelihood of encounters with overfished species. Bocaccio mortality is expected to increase by 11.5 percent (5.8 mt) as a result of the increase in the sub-bag limit. Given the large magnitude of the buffer between projected mortality and the recreational allocation, the HG is not likely to be exceeded.

This proposed rule would allow shelf rockfish retention in the Cowcod Conservation Area, excluding bronzespotted, canary, cowcod, and yelloweye rockfish, from 0–20 fathoms when the season is open to fishing. Bocaccio, an overfished and desirable recreational species, could be retained under this option. Incidental catch of cowcod in the area south of 34°27' north latitude continues to be restricted by the CCAs. In 2010, the state of California implemented marine protected areas in state waters between Point Conception to U.S. Mexico border, including state waters adjacent to offshore islands and rocks. The best available scientific information on depth distributions of cowcod indicates that adults primarily inhabit depths deeper than 60 fm (110 m). The California Recreational Fisheries Survey (CRFS) is used to estimate total marine recreational catch and effort in California. CRFS sample data from 2005 through 2010 indicating encounters of nearshore and shelf rockfish species, stratified by depth and area were used to analyze rockfish catch. These data were used to: Evaluate current fishing activity in depths greater than 20 fathoms or less; to evaluate mortality of shelf rockfish; and evaluate the mortality of overfished species as a result of allowing retention of shelf rockfish in the CCA. Allowing retention in this area may reduce the overall bycatch of shelf rockfish, since fish previously discarded would likely be retained, and effort on-the-grounds could be reduced. However, public comments submitted to the National Marine Fisheries Service on the 2011–12 FEIS indicate that some increase in revenue could occur as a result of allowing shelf rockfish retention within the CCA. The extent to which this increase in revenue may increase or reduce the amount of effort is currently unknown. Some increase to bocaccio mortality would be expected as a result of allowing shelf rockfish retention inside 20 fathoms, but overall projected mortality will not change compared to 2011–2012. Any increase in mortality as a result of the strong incoming year class entering the recreational fishery could still be accommodated without exceeding the recreational HG, and especially, the ACL. No changes to projected mortality of cowcod are expected to occur compared to 2011–2012 under this rule. Additionally, increased shoreside sampling landings estimates resulting from increased sub-bag limits are likely to reduce uncertainty associated with angler identification, allowing retention of species that otherwise may have been discarded, allowing for further species verification by CRFS dockside samplers.

The preferred recreational depth restriction in the Southern Management Area is 50 fathoms for 2013–2014, a change from 60 fathoms in 2011–2012. Tradeoffs between depth restrictions in the Southern Management Area were explored to reduce cowcod encounters. Submersible surveys at the Northern end of the Southern California Bight indicate that juvenile cowcod were most common from 49 fm to 82 fm and adults were most common from 66 fm to 115 fm. The projected mortality under the 50 fm depth option includes a decrease of 0.9 mt for bocaccio, 0.1 mt for canary rockfish, and 0.1 mt of cowcod compared to the No Action alternative of a 60 fm depth restriction, due to the reduction of available fishing area. If cowcod encounters are tracking higher or lower than projected, inseason action could be taken to modify the depth restrictions accordingly.

Management measures for recreational fisheries off all three West Coast states are found at § 660.360, subpart G.

Pacific Coast Treaty Indian fisheries Management Measures

Tribes implement management measures for tribal fisheries both separately and cooperatively with those management measures that are described in the Federal regulations. The tribes may adjust their tribal fishery management measures, inseason, to stay within the overall harvest targets and estimated impacts to overfished species. Trip limits are the primary management measure that the tribes specify in Federal regulations at § 660.50, subpart C.

Continued from 2011–2012, the tribes propose trip limit management in tribal fisheries during 2013–2014 for several species including: Spiny dogfish; several rockfish species and species groups, including thornyheads; and flatfish species and species groups. For spiny dogfish, tribal fisheries in 2013–

2014 will continue to be restricted to a cumulative limit of ''60,000 lbs (27,216 kg) per two month period;'' the same trip limit that is in place for vessels fishing in the Shorebased IFQ Program. For rockfish species, tribal regulations will continue to require the 2013–2014 tribal fisheries to fully retain all overfished rockfish species and marketable non-overfished rockfish species. Tribal fisheries are restricted to ''17,000 lbs (7,711 kg) per two month period'' for shortspine thornyheads and ''22,000 lbs (9,979 kg) per two month period'' for longspine thornyheads. As in 2011–2012, other rockfish, including minor nearshore, shelf, and slope rockfish, are restricted to a ''300 lb (136 kg) per trip'' limit for each species group in 2013–2014. Also, as in 2011–2012, rockfish would be restricted to the limited entry trip limits if those limits are higher than 300 lb (136 kg) per trip. For 2013–2014, a new, higher, trip limit is established for redstripe rockfish (*Sebastes proriger*). Redstripe rockfish is a species in the minor shelf rockfish complex and makes a relatively large contribution to the stock complex OFL. In recent years, large schools of redstripe rockfish have been encountered in the tribal midwater trawl fishery, and allowing these fish to be landed is not anticipated to have mortality exceed the OFL contribution. As in 2011–2012, tribal midwater trawl fisheries in 2013–2014 are subject to a cumulative limit for yellowtail rockfish of 180,000 lb (81,647 kg) per two months and the landings of widow rockfish must not exceed 10 percent of the cumulative poundage of yellowtail rockfish landed by a given vessel for the year. As in 2011–2012, trip limits for canary rockfish and yelloweye rockfish in 2013–2014 are ''300 lb (136-kg) per trip'' and ''100 lbs (45 kg) per trip'', respectively. The tribes will continue to develop management measures, including depth, area, and time restrictions, in the directed tribal Pacific halibut fishery in order to minimize incidental catch of yelloweye rockfish.

Tribal cumulative limits for most flatfish species in 2013–2014 are the same as those that were in place in 2011–2012. As in 2011–2012, the 2013–2014 tribal cumulative limits are ''110,000 lbs (49,895 kg) per two months'' for Dover sole, English sole, and Other Flatfish, combined; and ''150,000 lbs (68,039 kg) per two months'' for arrowtooth flounder. For 2013–2014, the ''50,000 lb (22,680 kg) per two months'' tribal cumulative limit for petrale sole is removed and replaced with an overall harvest target of 220 mt. Catches of petrale sole in the tribal bottom trawl fishery during 2012 was higher than anticipated. This re-structured management measure is intended to allow the tribes to modify their fishery management measures to control catch of petrale sole without the need for conforming Federal action. Tribal fishing regulations, as recommended by the tribes and the Council, and adopted by NMFS, are in Federal regulations at § 660.50, subpart C.

Housekeeping Measures

Several non-substantive revisions are made to regulations to improve consistency, remove unnecessary redundancies, remove subpart references, group similar regulations, and to add clarifying cross-references.

At § 660.11, paragraph (1) of the definition for ''Conservation area(s)'' is revised so the description of the purpose of the Groundfish Conservation Areas (GCAs) is consistent with the description of the uses for invoking these GCAs at § 660.60(c)(3). The revision to the definition of ''Conservation area(s)'' does not change how or why GCAs are used, but simply brings consistency between the language describing the uses in two different sections of the groundfish regulations.

The definition of ''Fishery harvest guideline'' at § 660.11 is revised to clarify that all anticipated catch in tribal fisheries, not just those species for which the tribes have a formal allocation, is deducted from the ACL. The same non-substantive changes are made at § 660.55(b) to the description of how the fishery harvest guideline is calculated.

Prior to 2011, groundfish fishing regulations that pertained to tribal fisheries were contained in two separate sections: § 660.324 ''Pacific Coast Treaty Indian Fisheries''; and § 660.385 ''Washington Coastal Tribal Fisheries Management Measures''. During 2011, groundfish regulations were re-organized and these two sections of tribal groundfish regulations were combined into a single section at § 660.55. Combining the two sections without revisions has caused some confusing inconsistencies, redundancies, and disorganization within § 660.55. The two different naming conventions for the sections remain in regulation even though they have identical meanings. NMFS proposes to eliminate the naming convention that is used least frequently in the groundfish regulations in part 660, subparts C through G, and revise the regulations at § 660.55 to refer to the tribal fisheries as ''Pacific Coast Treaty Indian Fisheries.'' NMFS also proposes to separate information on overall tribal catch levels, such as allocations, harvest guidelines and set-asides and bring them together at § 660.55(f). NMFS is also proposing to separate information regarding how tribal fisheries will be managed to achieve but not exceed their overall catch levels and bring them together at § 660.55(g). No substantive changes are made to regulations with these changes, unless described above under ''Pacific Coast Treaty Indian Fisheries''; provisions are merely being moved from other paragraphs of § 660.55 in order to group similar types of information.

Also in § 660.55, trip limits for rockfish in tribal fisheries at § 660.55(g)(6) have been described since 2005 as 300 lb per trip, or equal to the non-tribal limited entry fishery trip limit for those species, if that limit is less restrictive than 300 lb per trip. The reference to limited entry fishery trip limits intentionally did not distinguish between limited entry trawl and limited entry fixed gear fisheries; tribal trip limits could be raised as high as the highest trip limit in either limited entry fishery. However, beginning in 2011, some of the rockfish species or species groups for which this trip limit provision applied were made IFQ species in the Shorebased IFQ Program and no longer have limited entry trawl fishery trip limits: They are now managed with IFQ. Therefore, a clarification is proposed at § 660.55(g)(6) to distinguish that, for IFQ species and species groups, only the trip limits imposed for the limited entry fixed gear fishery would be applicable since trip limits for IFQ species are no longer specified for the limited entry trawl fishery.

In § 660.60, newly redesignated paragraph (c)(3)(i) is revised to clarify that depth-based area restrictions may be implemented, either automatically or as an inseason action, in the at-sea Pacific whiting fishery. This brings consistency with existing regulations at § 660.150(c)(2)(i)(B)(*3*) and § 660.160(c)(3)(iii).

Several sections of the groundfish regulations are composed of long lists of latitude and longitude coordinates that are used to define groundfish conservation areas and areas designated as essential fish habitat. In § 660.72(j) there is a list of 256 subparagraphs, and they all appear in the appropriate order. However, there is a mistake in the paragraph designation at (j)(247), where an extra digit was added to the paragraph number and it appears in the CFR as (j)(2475). Since the content and the location of the paragraph are correct, it is apparent that the paragraph should

have been (j)(247). Therefore, the paragraph is redesignated so that the extra digit is removed. This will reduce confusion that may be caused by the incorrect paragraph designation that is currently in the CFR.

On May 15, 2012, NMFS published a final rule to establish a process to reapportion Pacific whiting (77 FR 28497) at § 660.131(h). In the regulations that describe QP allocations for Pacific whiting, a new paragraph is added at § 660.140(d)(1)(ii)(B)(4) so that reapportionment of Pacific whiting is included as one of the ways that additional QP may be issued to QS accounts. The added paragraph does not change how or why reapportionment of Pacific whiting may occur, but simply brings consistency between the language describing the process in two different sections of the groundfish regulations.

NMFS also proposes clarifying language in surplus carryover regulations at § 660.140(e)(5)(i), which state that additional surplus carryover QP or IBQ pounds will not be issued by NMFS above the vessel limits. This reiterates existing regulations at § 660.140(b)(1)(v) and does not change the effect or impact of the existing regulations. Also at § 660.140(e)(5)(i), NMFS proposes clarifying language stating that surplus QP or IBQ pounds are not included as part of the shorebased trawl allocation.

Classification

At this time, NMFS has made a preliminary determination that the 2013–2014 groundfish harvest specifications and management measures in this proposed rule are consistent with PCGFMP, the MSA, and other applicable law. In making its final determination, NMFS will take into account the complete record, including the data, views, and comments received during the comment period.

A DEIS was prepared for the 2013–2014 groundfish harvest specifications and management measures. The DEIS includes socio-economic information that was used to prepare the RIR and IRFA. The Environmental Protection Agency published a notice of availability for the draft EIS on June 15, 2012 (77 FR 35961). A copy of the DEIS is available online at *http://www.pcouncil.org/.*

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows: The RIR/IRFA summarizes the key indicators and analyses used in the DEIS to compare the alternatives. Among other things, the DEIS discusses the impacts of the alternatives on commercial fishermen, the processors, recreational fishermen and businesses, and fishing communities.

The reasons for why agency action is being considered and the statement of objectives and legal basis for the proposed rule are discussed above in the **SUMMARY** and in the Executive Summary. The number of small entities that are affected is discussed below along with the other IRFA requirements. The analysis below suggests that there are approximately 1,900 small entities involved in the fishery.

This proposed rule will regulate businesses that harvest groundfish. This rule directly affects limited entry fixed gear permit holders, trawl quota share and whiting catch history endorsed permit holders (which includes shorebased whiting processors), tribal vessels, charterboat vessels, and open access vessels. Quota share holders are directly affected because the amount of quota pounds they receive based on their quota shares are affected by the ACLs. Vessels that fish under the trawl rationalization program receive their quota pounds from the quota share holders, and thus are indirectly affected if they only own vessel accounts rather than quota shares. Similarly, Mothership processors are indirectly affected as they receive the fish they process from limited entry permits that are endorsed with whiting catch history assignments. According to the Small Business Administration, a small commercial harvesting business is one that has annual receipts under $4.0 million, a small charter boat business is one that has annual receipts under $7 million, and a small processor is one that employs 500 employees or fewer. To determine the number of small entities potentially affected by this rule, NMFS reviewed analyses of fish ticket data and limited entry permit data, the DEIS associated with this rulemaking, which includes information on charterboat, tribal, and open access fleets, available cost-earnings data developed by NWFSC, and responses associated with the permitting process for the Trawl rationalization program where applicants were asked if they considered themselves a small business based on SBA definitions. This proposed rule would regulate businesses that harvest groundfish.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and tribal fleets, available industry responses to on-going surveys on ownership, current permit information, and the EIS associated with this rule making. As part of the permitting process for the Trawl rationalization program, applicants were asked if they considered themselves a small business. Quota shares were initially allocated to 166 limited entry trawl permit holders (permits held by catcher processors did not receive QS, while one limited entry trawl permit did not apply to receive QS) and to 10 whiting processors. Thirty-six limited entry permits also have MS/CV endorsements and catch history assignments. Because many of these permits were owned by the same entity, these initial allocations were consolidated into 138 quota share permits/accounts. Of the 166 limited entry permits that received quota share, 25 limited entry trawl permits are either owned or closely associated with a ''large'' shorebased processing company or with a non-profit organization who considers itself a ''large'' organization. Nine other permit owners indicated that they were ''large'' companies. Almost all of these large companies are associated with the shorebased and mothership whiting fisheries. The remaining 132 limited entry trawl permits are likely held by ''small'' companies. Of the 10 shorebased processing companies (whiting first receivers/processors) that received whiting QS, three are ''small'' entities.

There are 222 fixed gear limited entry permits with 164 of these permits endorsed for sablefish. Currently 105 of these sablefish permits are stacked onto 42 vessels. Open access vessels are not federally permitted so counts based on landings can provide an estimate of the fleet. In 2011, 682 directed open access vessels fished while 284 incidental open access vessels fished for a total of 966 vessels. Over the 2005–2010 period, 1,583 different directed open access vessels fished and 837 different incidental open access vessels fished for a total of 2,420 different vessels. According to the DEIS, over the 2008–2010 period, 447 to 470 charterboats participated in the groundfish fishery. The four tribal fleets sum to a total of 54 longline vessels, 5 whiting trawlers, and 5 non-whiting trawlers, for a grand total of 64 vessels. Available

information on average revenue per vessel suggests that all the entities in these groups can be considered small.

There are no new reporting or recordkeeping requirements. There are two new compliance requirements: An offloading requirement and a blackgill rockfish sorting requirement. As discussed above (See Sorting Requirements), current regulations already authorize the expansion of sorting requirements. In this instance, blackgill rockfish need to be sorted to a species specific level so that its catch can be matched against the new blackgill rockfish HG. As discussed above (See Offloading Requirements), NMFS is proposing to expand the offload requirements now used in the trawl rationalization program to all other sectors of the fishery. Every sector of the groundfish fishery, including landings in the limited entry fixed gear and open access fisheries, would be required to completely remove all fish from the vessel once landing had begun, in order for them to be allowed to start a subsequent trip. This requirement will make matching catch against sector allocations more accurate. NMFS is seeking comments from participants in the limited entry fixed gear and open access sectors, on the proposed action to require all fish from any trip, except for vessels fishing in the at-sea sectors of the Pacific whiting fishery, be offloaded prior to beginning a new trip.

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action. There are no significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any of the significant economic impact of the proposed rule on small entities. An analysis of the alternatives follows.

The DEIS compared alternatives based on time to rebuild, changes in ex-vessel revenues, recreational trips and amount of regional impacts generated as measured by changes in personal income. The RIR/IRFA and the DEIS describe the alternatives in more detail and include the Council's analysis of the economic effects associated with the new management measures and accounting measures. These new management measures are not incorporated into the models used to project ex-vessel revenue, net revenue, income impacts, and employment used in the evaluation of the alternatives. Except for new recreational shelf rockfish retention measures, which may increase annual charterboat revenues by $3.5 to $7.0 million, generally speaking, the impacts of these new measures will have insignificant socio-economic effects. Several new measures include the elimination of unneeded size limits or allowing greater opportunity of harvested fish in one sector to be reallocated to another. The RIR/IRFA also contains discussions taken from the DEIS that address the following: non-market values, safety, and effects on processors. The effects on processors are generally reflected in the change in ex-vessel revenues discussed bellowed. The Council's conclusion on non-market values of groundfish is that there was no quantitative information to assess the non-consumptive uses that range from recreational enjoyment of the environment, or on the benefits from the knowledge that these resources will be available in the future or that the environmental quality is maintained. Regardless, even should such information be available, it is not likely that there would be substantive differences among the alternatives. The differences between the integrated alternatives in terms of their possible effects on vessel safety are expected to be negligible.

The DEIS undertakes comparisons of the eight integrated action alternatives that are described above using the no action alternative as a benchmark. In comparing the action alternatives to the no action alternative, much of the change results from a 25 percent reduction in the ACL for sablefish north of 36° north latitude. This reduction extends across all the 2013 action alternatives and forms a backdrop affecting all sectors targeting sablefish. The affected sectors and projected respective shares of total groundfish ex-vessel revenue contributed by sablefish landings under no action are: Nonwhiting Trawl (IFQ) 50 percent, Limited Entry Fixed Gear 79 percent, Non-nearshore Open Access 88 percent, and Tribal groundfish (including shoreside whiting) 35 percent.

As the no action alternative represents the status quo, the economic analysis of this alternative provides the main characteristics of the current fishery. Under the no action alternative, total shoreside ex-vessel revenues from groundfish landings of $93,512 are projected in 2013. This includes the following projections for shoreside groundfish sectors: Whiting Trawl $23.65 million, Nonwhiting Trawl $26,912 million, Limited Entry Fixed Gear $19,068 million, Nearshore Open Access $4,218 million, Non-nearshore Open Access $7,687, Tribal groundfish (including shoreside whiting) $11.825 million, and Incidental Open Access $0.151 million. In addition $30,890 million ex-vessel revenue equivalent from the at-sea non-tribal whiting fisheries (combined motherships and catcher processors) and $9.675 million ex-vessel revenue equivalent from the at-sea Tribal whiting (mothership) fisheries are projected under the no action and all the action alternatives. Total shoreside and at-sea revenues including Tribal shoreside and at-sea revenues, are projected to reach $134 million.

The combined projected revenue estimate of $134 million is higher than what actually occurred in 2011. Total groundfish revenues including tribal and at-sea fisheries reached $122 million in 2011. The main reason for the difference concerns Pacific whiting. To model the socioeconomic impacts of the alternatives the same Pacific whiting TAC, U.S. allocation, and sector allocations—equal to those set for 2011—were used for all of the integrated alternatives including No Action. However in 2011, the entire U.S. allocation was not caught. The analysis predicts that 287,000 mt of whiting will be landed under the no action alternative. During 2011, 230,000 mt of whiting was landed. The assumption that whiting landings will approximate 287,000 mt in 2013 and 2014 will depend on the upcoming stock assessment in April 2013. However, recent changes in the ability to reapportion unharvested whiting from the tribal sector to the non-tribal sectors make it more likely that whatever the allocation, it will be more fully harvested.

In comparison to the no action alternative, depending in the indicator, the range of impacts across the action alternatives is either negative or essentially reflects no change: ex-vessel revenues (−9.60 percent to −16.6 percent), shoreside commercial fishery net revenues, a measure of effects on vessel profits (−14.40 percent to −24.70 percent), total recreational trips (−1.8 percent to +0.3 percent), community commercial fishery income impacts (−9.8 percent to −18.0 percent), employment impacts (−6.3 percent to −19.8 percent), change in regional unemployment rates (+.001 percent to +.003 percent), recreational income impacts (−10.3 percent to +0.2 percent), combined recreational and commercial income impacts (−5.3 percent to −14.5 percent), and processor groundfish purchases (−9.6 percent to −16.6 percent).

Of the indicators listed above, the coastwide income indicator is the most comprehensive indicator because it incorporates both recreational and commercial information including shoreside tribal fisheries. The action alternatives do not differ greatly in level of income generated. Alternatives 1, 2,

and 8 differ from alternatives 6 and 7 by $235,000. After rounding to the nearest million, these alternatives all generate about $155 million in coastwide income. Coastwide income under alternatives 3–5 generate income levels that range from $141 million to $149 million. Alternative 4, as it has the lowest level of canary, generates the lowest income level of $141 million. Adoption of this alternative, would lead to a 14.5 percent decrease in income from the no action alternative level of $165 million.

The range in differences in the action alternatives summarized above result from varying levels of POP and canary rockfish ACLs. The allowable total mortality of canary rockfish affects all sectors of the groundfish fishery, while that for POP affects only the northern trawl fishery (both the at-sea whiting sectors and the shorebased IFQ sector, whiting and non-whiting). However, differences in nontrawl sector impacts (both projected total mortality and socioeconomic impacts) are due solely to variation of the canary rockfish ACL across the integrated alternatives. A substantial amount of total fishing mortality for canary rockfish also incurs in the recreational sector. Increased canary rockfish harvests may lead to increased harvests of bocaccio and cowcod, while the petrale sole fishery is limited by the available amount of canary and yelloweye rockfish, and Pacific halibut.

Under the no action alternative, the following impacts were assessed. A total of 653,600 groundfish and Pacific halibut trips are projected coastwide. Just over half of these are private boat trips with the remainder taken on charterboats. The breakdown by state is: Washington 27,100 trips (14,300 charter + 12,800 private), Oregon 92,100 trips (37,600 charter + 54,400 private, and California (269,400 charter + 265,100 private). For shoreside communities, commercial groundfish fishing coastwide generates income and employment impacts of $90.249 million and 3,029 total and full time part-time jobs. The unemployment rate in coastal counties coastwide in 2010 according to the Bureau of Labor Statistics was 11.17 percent. A total of $74.089 million in income impacts were generated by recreational groundfish angling. The total, combined coastwide commercial plus recreational, income impacts under no action is $164,518 million. Under no action, total purchases of groundfish landings by shoreside processors are projected in 2013. This total includes projected purchases of $23.65 million of whiting and $69.862 million in deliveries of combined nonwhiting groundfish species.

Although not explicitly analyzed, the combination of low canary rockfish and POP ACLS would affect the trawl fleets significantly. Low canary ACLs (i.e., <100 mt) and low POP ACLs (i.e., <150 mt) could result in limiting trawl fisheries to deeper waters outside the range of canary rockfish and POP. The low canary rockfish ACL negatively affects the smaller-sized trawlers that cannot safely fish the deeper slope areas, and are limited to fishing on the shelf shoreward of the RCA. The whiting fishery is especially challenged when canary rockfish and POP ACLs are both low because they have to avoid a larger area to target whiting without exceeding a canary rockfish or POP set-aside. When canary rockfish allocations are low, the whiting fleet tends to move to deeper waters to avoid canary rockfish at the expense of higher bycatch rates of darkblotched rockfish and POP. When POP allocations are low, the fleet targets whiting on the shelf to avoid that species. When both allocations are low, there are few areas the whiting fleets can go to safely target whiting.

For purposes of contrast, the impacts of alternative 1 (The Council preferred alternative; alternatives 2 and 8 yield the same impacts), alternative 4 (greatest negative impact) and alternative 6 (least negative impact, alternative 7 yields same impact) are presented. Projected impacts under alternative 2 are the same as under alternative 1 for all commercial groundfish sectors. This is because measures used to manage commercial fisheries to stay within the 116 mt canary rockfish ACL and sector HGs under alternative 1 are also sufficient to not exceed the 101 mt canary rockfish ACL under alternative 2. The primary common factor limiting commercial groundfish fisheries modeled under alternatives 1 and 2 is the fixed ACL for POP. Impacts under alternative 2 are the same as alternative 1. This result is because measures used to manage cowcod, bocaccio, and yelloweye rockfish to stay within their common ACLs and HGs under all the action alternatives are already sufficient to manage for the lower canary rockfish ACL under alternative 2.

Projected impacts under alternative 8 are the same as under alternative 1 (the preferred alternative). The lack of difference in projected ex-vessel revenue impacts may seem surprising given that management measures to limit canary rockfish mortality are likely to affect target species fishing opportunity. However, measures used to manage commercial trawl fisheries to stay within the 150 mt POP ACL and sector HGs under alternative 8 are the same as those used under alternative 1. Thus the POP ACL is more limiting of commercial trawl fisheries modeled under alternatives 1 and 8 than is the canary rockfish ACL. Similarly the 3.3 mt of yelloweye rockfish allocated to the fixed gear fisheries sectors under all the action alternatives means that increasing the canary rockfish ACL is not expected to increase fishing opportunity for fixed gear sector target species to any great degree. Projected impacts under alternative 7 are the same as under alternative 6 for all commercial groundfish sectors. This is because measures used to manage commercial fisheries to stay within the 222 mt POP ACL and sector HGs under alternative 7 are the same as those used under alternative 6. The 222 mt POP ACL is the main factor limiting commercial fisheries modeled under both alternatives 6 and 7.

For recreational impacts, other than alternative 4, estimates of the impacts do not differ because of the constant levels of the other overfished species or because POP is not a recreational fish. Projected impacts under alternative 2, 5, 6, 7, and 8 are the same as under alternative 1. This is because measures used to manage cowcod, bocaccio and yelloweye rockfish to stay within their common ACLs and HGs under the action alternatives generally override the effects of the lower canary rockfish ACL under alternative 6, and changes in the POP ACL do not impact recreational fisheries. Impacts under alternative 3 are the same as alternative 1. This is because POP is not generally caught by recreational anglers, so changes in the POP ACL do not impact recreational fisheries.

The regulations in this proposed rule would implement the Council's preferred alternative; in the discussion below references are made to options ''B'' and a distinction between alternative 1 and the Council preferred alternative, which is a modification of alternative 1. Under each of alternatives 1–8, two sub-alternatives (''A'' and ''B'') were developed for the Nearshore Open Access sector. The preferred alternative incorporates the management measures under sub-alternative B. This treatment reflects consideration of two different management options to achieve the prescribed bycatch levels. In each case, the ''B'' option would likely yield lower harvests and revenues for the Nearshore Open Access sector than would the ''A'' option, a difference of about $206,000 to a fishery projected to earn $4.2 million in revenues under the no action alternative.

The preferred alternative is very similar to alternative 1 except that the fishery harvest guideline is lower for petrale sole, yellowtail rockfish, and to a lesser extent, shortspine thornyheads, to accommodate tribal fisheries set asides. Increased allowances for research and at-sea whiting sector catch of arrowtooth flounder also reduce the fishery harvest guideline for these stocks. These changes reduce the fishery harvest guideline (allocations) for commercial fisheries for those four species accordingly. There may be an increase in tribal landings of petrale sole under the preferred alternative since projected tribal petrale sole landings under No action are slightly higher than the alternative 1 set aside. If the full amount of the tribal petrale sole set aside were landed under the preferred alternative, the upper bound on possible additional tribal revenue impact is on the order of +$0.25 million. All of these additional landings would be made in Puget Sound and Washington coast ports. Any increase in tribal yellowtail rockfish landings under the preferred alternative is less certain since projected tribal yellowtail rockfish landings under no action are well below the alternative 1 set aside amount. There is no expected decrease in commercial trawl (IFQ) fisheries revenue impacts under the preferred alternative because projected landings of petrale sole and yellowtail rockfish under alternative 1B are both well below the preferred alternative's shorebased trawl sector harvest guideline. There is no expected decrease in non-trawl sectors' revenue impacts under the preferred alternative because the affected species either are not taken (arrowtooth flounder, petrale sole), or projected landings under alternative 1B are well below the preferred alternative's non-trawl sector harvest guideline (shortspine thornyheads, yellowtail rockfish). As a result, preferred alternative may differ slightly from alternative 1 in the distribution of revenues between Nonwhiting Trawl and Tribal fisheries sectors.

Compared with No Action, under the alternative 1B, total shoreside ex-vessel revenue is projected to decline by $9.174 million (−9.8 percent) and accounting net revenues by $4.510 (−14.7 percent). Nearshore Open Access would see projected revenues increase by $0.539 million (+12.8 percent) under alternative 1B. These numbers represent the most favorable outcome for the Nearshore Open Access sector and are the same as those expected under alternatives 2, 3, 5, 6, 7, and 8. All other shoreside directed groundfish sectors would experience ex-vessel revenue decreases from no action under this alternative: Whiting Trawl by $0.278 million (−1.2 percent), Nonwhiting Trawl by $3.175 million (−11.8 percent), Limited Entry Fixed Gear by $3.782 million (−19.8 percent), Non-nearshore Open Access by $1.436 million (−18.7 percent), and Tribal groundfish by $1.042 million (−8.8 percent). Under alternative 1, Shoreside Whiting and Nonwhiting Trawl would experience the second highest ex-vessel revenues among the action alternatives. Ex-vessel revenues for Limited Entry Fixed Gear, Non-nearshore Open Access and Tribal sectors do not vary across the action alternatives. Under the preferred alternative and alternative 1, angler trips coastwide are projected to increase by 1,700 (+0.3 percent) over no action, with all of the increase occurring in the Mendocino and Sonoma County (Fort Bragg—Bodega Bay) region of California. No change in angler effort is expected in Washington or Oregon. Alternative 1 shows the greatest increase in angler trips under the action.

Compared to the status quo as measured by the no action alternative, total ex-vessel revenue under the proposed regulations is projected to decline by about 10 percent ($9.2 million) and accounting net revenues (vessel ''profits'') by 15 percent ($4.5 million). This is primarily due to the decline in the sablefish ACLs, which under no action/status quo alternative sum to 6,813 mt, versus 5,451 mt under the proposed regulations. This is a 20 percent decline in the ACL. Based on sablefish prices used in the analysis, declining sablefish revenues account for about 80 percent of the projected decline of $9 million. Under the proposed regulations, angler trips coastwide are projected to increase by 1,700 (+0.3 percent) compared to the status quo. Under the proposed regulations, income from commercial groundfish fishing is projected to decline by $9.274 million (−10.3 percent). Income impacts from recreational groundfish are expected to increase by $0.136 million (+0.2 percent). Combined coastwide commercial plus recreational income impacts are expected to decrease by $9.138 million (−5.6 percent) compared to the no action alternative.

For context, total groundfish revenues including tribal and at-sea fisheries reached $122 million in 2011–a 43 percent increase over 2010. Major causes of the increase can be associated with a 33 percent increase in sablefish prices; 43 percent increase in whiting prices, and 60 percent increase in whiting harvests. However, prices for all major species except lingcod increased in 2011. For most species, the percentage increase in ex-vessel prices was greater than 25 percent. Specific reasons for these increases are unknown, but appear correlated with improvements in U.S. and World economies, and in particular for sablefish, the Japanese market. For the shoreside trawl fishery, the IFQ program may also have had an influence on prices. Sablefish now accounts for almost 40 percent of the entire groundfish fishery (shoreside, at-sea, and tribal) revenues. Total groundfish revenues and total shoreside revenues in 2011 including whiting are at levels not seen since 1997. However, despite these increases, the shoreside non-whiting fishery has not returned to pre-overfished era levels. During the period 1981 to 1998, shoreside non-whiting revenues averaged $98 million annually in inflation adjusted revenues. For the period 1999 to 2011, shoreside non-whiting revenues have averaged $54 million. Shoreside non-whiting revenues reached $69 million in 2011, compared to $58 million in 2010.

With respect to assessing the needs of communities and choosing the time period to rebuild, the Council is recommending keeping to a constant harvest rate because, as stock biomass increases, the ACL increases correspondingly (essentially, a constant fraction of the population, rather than quantity, is removed from the population). Maintaining the no action ACL of 107 mt for canary would imply a constant catch policy in which the ACL would be set at a fixed value for the duration of the rebuilding period. This strategy is problematic if, as the stock becomes more abundant, harvesters have a harder time avoiding incidental catch. Fishery managers would then have to impose even more restrictive measures to prevent the ACL from being exceeded. Furthermore, it is not clear that a harvest rate associated with this lower ACL would rebuild the stock any faster than the preferred alternative since decreasing the SPR harvest rate from the default 88.7 percent to 90 percent—an ACL of 101 mt in 2013—shortens rebuilding by only one year. The preferred ACL maintains the spawning biomass per recruit (SPR) harvest rate and provides a level of harvest that is expected to rebuild in a time period as short as possible, while taking into account the needs of fishing communities. For POP, the ACLs of 150 mt and 153 mt in 2013 and 2014, respectively maintain the SPR harvest rate and provide a level of harvest that is reduced from the ACLs in 2011—and 2012 to take into account fundament

changes in our understanding of the biology of the stock. Although the target time to rebuild POP is extended to 2051 due to revised estimates of the unfished biomass, which is estimated to be much larger than in previous assessments, POP limits access to target stocks as indicated in the integrated alternatives analyzed in the DEIS. As a result, the 2013 POP ACL is 18 percent lower than the status quo 2012 POP ACL. Maintaining a continued constant harvest strategy allows incidental take of POP in target fisheries, allowing POP to rebuild in as short a time as possible, while also balancing the needs of fishing communities.

The final preferred alternative represents the Council's efforts to address the MSA's requirements to rebuild stocks in as short a time as possible, taking into account: (1) The status and biology of the stocks, (2) the needs of fishing communities, and (3) interactions of depleted stocks within the marine ecosystem. By taking into account the ''needs of fishing communities'' the Council was also simultaneously taking into account the ''needs of small businesses'' as fishing communities rely on small businesses as a source of economic income and activity and income. During its four major council meetings, actions and revisions by the Council in selecting the preferred alternative can be seen as means of trying to mitigate impacts of the proposed rule on small entities. The DEIS includes analysis of a range of alternatives that were considered by the Council, including analysis of the effects of setting allowable harvest levels necessary to rebuild groundfish species that were previously declared overfished. The Council reviewed these analyses and read and heard testimony from Council advisors, fishing industry representatives, representatives from non-governmental organizations, and the general public before deciding the final Council-preferred alternative in June 2012. The Council's final preferred management measures are intended to stay within all the final recommended harvest levels for groundfish species decided by the Council at their April and June 2012 meetings.

The above analysis suggests that there are approximately 1,400 small entities involved in the fishery. Under the RFA, an agency does not need to conduct an IRFA and/or Final Regulatory Flexibility Analysis (FRFA), if an agency can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The economic analysis forecasts that 2013–2014 will lead to an increase in recreational groundfish trips and a decline of about 15 percent in commercial revenues compared to 2011, largely because of the decline in the amount of sablefish available to be harvested. This decline will affect the profits of both large and small entities. However, we do not believe that this rule will place a substantial number of small entities at a significant competitive disadvantage compared to large entities. Nonetheless, NMFS has prepared an IRFA. Through the rulemaking process associated with this action, we are requesting comments on this conclusion.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementing the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006, concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On February 9, 2012, NMFS's Protected Resources Division issued a Biological Opinion (BO) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery in 2012. In this Opinion, NMFS concluded that the operation of the groundfish fishery is not likely to jeopardize the continued existence of green sturgeon (Acipenser medirostris), eulachon (Thaleichthys pacificus), humpback whales (Megaptera novaeangliae), Steller sea lions (Eumetopias jubatus), and leatherback sea turtles (Dennochelys coriacea). NMFS also concluded that the operation of the groundfish fishery is not likely to destroy or adversely modify designated critical habitat of green sturgeon or leatherback sea turtles. Furthermore, NMFS concluded that the operation of the groundfish fishery may affect, but is not likely to adversely affect the following species and designated critical habitat: Sei whales (Balaenoptera borealis); North Pacific Right whales (Eubalaena japonica); Blue whales (Balaenoptera musculus); Fin whales (Balaenoptera physalus); Sperm whales (Physter macrocephalus); Southern Resident killer whales (Orcinus orca); Guadalupe fur seals (Arctocephalus townsendi); Green sea turtles (Chelonia mydas); Olive ridley sea turtles (Lepidochelys olivacea); Loggerhead sea turtles (Carretta carretta); critical habitat of Southern Resident killer whales; and critical habitat of Steller sea lions.

On August 25, 2011, NMFS' Sustainable Fisheries Division initiated consultation with U.S. Fish and Wildlife Service (USFWS) pursuant to section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the operation of the Pacific coast groundfish fishery. The Biological Assessment (BA) on the effects of the groundfish fishery on endangered species was revised and re-submitted to USFWS on January 17, 2012. The BA concludes that the continued operation of the Pacific Coast Groundfish Fishery is likely to adversely affect short-tailed albatross; however, the level of take is not expected to reduce appreciably the likelihood of survival or significantly affect recovery of the species. The BA preliminarily concludes that continued operation of the Pacific Coast Groundfish Fishery is not likely to adversely affect California least terns, marbled murrelets, bull trout, and Northern or Southern sea otters. USFWS

formally responded with a letter dated March 29, 2012 and advised NMFS that formal consultation has been initiated. Marine Mammal Protection Act (MMPA) impacts resulting from fishing activities in this final rule are discussed in the DEIS for the 2013–2014 groundfish fishery specifications and management measures. As discussed above, NMFS issued a BO addressing impacts to ESA listed marine mammals and is currently completing formal consultation for the ongoing effects of prosecution of the groundfish fishery for 2013 and beyond. NMFS is also working on the process leading to any necessary authorization of incidental taking under MMPA section 101(a)(5)(E).

Pursuant to Executive Order 13175, this proposed rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.324(d) further state ''the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus''. The tribal management measures in this proposed rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the non-whiting tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: November 2, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 773 *et seq.*

2. In § 660.11, revise the definitions for ''Conservation area(s)'' paragraph (1), and ''Fishery harvest guideline'' as follows:

§ 660.11 General definitions

* * * * *

Conservation area(s) * * *

(1) *Groundfish Conservation Area or GCA* means a geographic area defined by coordinates expressed in degrees latitude and longitude, wherein fishing by a particular gear type or types may be prohibited. Regulations at § 660.60(c)(3) describe the various purposes for which these GCAs may be implemented. Regulations at § 660.70 define coordinates for these polygonal GCAs: Yelloweye Rockfish Conservation Areas, Cowcod Conservation Areas, waters encircling the Farallon Islands, and waters encircling the Cordell Banks. GCAs also include Bycatch Reduction Areas or BRAs and Rockfish Conservation Areas or RCAs, which are areas closed to fishing by particular gear types, bounded by lines approximating particular depth contours. RCA boundaries may and do change seasonally according to conservation needs. Regulations at §§ 660.70 through 660.74 define RCA boundary lines with latitude/longitude coordinates; regulations at Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, and Tables 3 (North) and 3 (South) of subpart F set RCA seasonal boundaries. Fishing prohibitions associated with GCAs are in addition to those associated with EFH Conservation Areas.

* * * * *

Fishery harvest guideline means the harvest guideline or quota after subtracting from the TAC, ACL, or ACT when specified, any allocation or projected catch for the Pacific Coast treaty Indian Tribes, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs.

* * * * *

3. In § 660.12, paragraphs (a)(11) through (a)(13) are redesignated as (a)(12) through (a)(14) and new paragraph (a)(11) is added to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(11) Fail to remove all fish from the vessel at landing (defined in § 660.11) and prior to beginning a new fishing trip, except for processing vessels in the catcher/processor or mothership sectors of the Pacific whiting fishery.

* * * * *

4. In § 660.40, introductory text and paragraphs (b), (e) and (f) are revised, paragraph (g) is removed, and paragraph (h) is redesignated as paragraph (g) to read as follows:

§ 660.40 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial ACLs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock. The harvest control rule may be expressed as a ''Spawning Potential Ratio'' or ''SPR'' harvest rate.

* * * * *

(b) *Canary rockfish.* Canary rockfish was declared overfished in 2000. The target year for rebuilding the canary rockfish stock to B_{MSY} is 2030. The harvest control rule to be used to rebuild the canary rockfish stock is an annual SPR harvest rate of 88.7 percent.

* * * * *

(e) *Pacific Ocean Perch (POP).* POP was declared overfished in 1999. The target year for rebuilding the POP stock to B_{MSY} is 2051. The harvest control rule to be used to rebuild the POP stock is an annual SPR harvest rate of 86.4 percent.

(f) *Petrale Sole.* Petrale sole was declared overfished in 2010. The target year for rebuilding the petrale sole stock to B_{MSY} is 2016. The harvest control rule is the 25–5 default adjustment.

* * * * *

(g) *Yelloweye rockfish.* Yelloweye rockfish was declared overfished in 2002. The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2074. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual SPR harvest rate of 76.0 percent.

5. In § 660.50, paragraphs (f) introductory text, (f)(2)(ii), (f)(4), (g)

introductory text, (g)(5), through (7) are revised and (f)(6), (f)(7) are added to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries

* * * * *

(f) *Pacific Coast treaty Indian fisheries allocations, harvest guidelines, and set-asides.* Catch amounts may be specified in this section and in Tables 1a and 2a to subpart C. Trip limits for certain species were recommended by the tribes and the Council and are specified in paragraph (g) of this section.

* * * * *

(2) * * *

(ii) The Tribal allocation is 401 mt in 2013 and 435 in 2014 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N. lat.) ACL. The Tribal allocation is reduced by 1.5 percent for estimated discard mortality.

* * * * *

(4) *Pacific whiting.* The tribal allocation for 2012 is 48,556 mt. The tribal allocations will be announced annually in the **Federal Register**.

* * * * *

(6) For petrale sole, treaty fishing vessels are restricted to a fleetwide harvest target of 220 mt each year.

(7) Yellowtail rockfish taken in the directed tribal mid-water trawl fisheries are subject to a catch limit of 677 mt for the entire fleet.

(g) Pacific Coast treaty Indian fisheries management measures. Trip limits for certain species were recommended by the tribes and the Council and are specified here.

* * * * *

(5) *Yellowtail and widow rockfish.* The Makah Tribe will manage the midwater trawl fisheries as follows: Landings of widow rockfish must not exceed 10 percent of the weight of yellowtail rockfish landed, for a given vessel, throughout the year. These limits may be adjusted by the tribe inseason to minimize the incidental catch of canary rockfish and widow rockfish, provided the catch of yellowtail rockfish does not exceed the fleetwide catch limit specified in paragraph (f) of this section.

(6) *Other rockfish.*

(i) *Minor nearshore rockfish.* Minor nearshore rockfish are subject to a 300-lb (136-kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300-lb (136-kg) per trip. Limited entry trip limits for waters off Washington are specified in Table 1 (North) to subpart D, and Table 2 (North) to subpart E.

(ii) *Minor shelf rockfish and minor slope rockfish.* Redstripe rockfish are subject to an 800-lb (363 kg) trip limit. Minor shelf (excluding redstripe rockfish), and minor slope rockfish groups are subject to a 300-lb (136 kg) trip limit per species or species group, or to the non-tribal limited entry fixed gear trip limit for those species if those limits are less restrictive than 300-lb (136 kg) per trip. Limited entry fixed gear trip limits are specified in Table 2 (North) to subpart E.

(iii) *Other rockfish.* All other rockfish, not listed specifically in paragraph (g) of this section, are subject to a 300-lb (136 kg) trip limit per species or species group, or to the non-tribal limited entry trip limit for those species if those limits are less restrictive than 300-lb (136 kg) per trip. Limited entry trip limits for waters off Washington are specified in Table1 (North) to subpart D, and Table 2 (North) to subpart E.

(7) *Flatfish and other fish.* Trawl vessels are restricted to using small footrope trawl gear. Treaty fishing vessels using bottom trawl gear are subject to the following limits: For Dover sole, English sole, other flatfish 110,000-lbs (49,895 kg) per 2 months; and for arrowtooth flounder 150,000-lbs (68,039 kg) per 2 months. The Dover sole and arrowtooth flounder limits in place at the beginning of the season will be combined across periods and the fleet to create a cumulative harvest target. The limits available to individual vessels will then be adjusted inseason to stay within the overall harvest target as well as estimated impacts to overfished species.

* * * * *

6. In § 660.55, paragraph (k) is removed and reserved, paragraph (b) introductory text, and (j) are revised as follows:

§ 660.55 Allocations.

* * * * *

(b) *Fishery harvest guidelines and reductions made prior to fishery allocations.* Prior to the setting of fishery allocations, the TAC, ACL, or ACT when specified, is reduced by the Pacific Coast treaty Indian Tribal harvest (allocations, set-asides, and estimated harvest under regulations at § 660.50); projected scientific research catch of all groundfish species, estimates of fishing mortality in non-groundfish fisheries and, as necessary, deductions for EFPs. The remaining amount after these deductions is the fishery harvest guideline or quota. (note: recreational estimates are not deducted here).

* * * * *

(j) *Fishery set-asides.* Annual set-asides are not formal allocations but they are amounts which are not available to the other fisheries during the fishing year. For Pacific Coast treaty Indian fisheries, set-asides will be deducted from the TAC, OY, ACL, or ACT when specified. For the catcher/processor and mothership sectors of the at-sea Pacific whiting fishery, set-asides will be deducted from the limited entry trawl fishery allocation. Set-aside amounts will be specified in Tables 1a through 2d of this subpart and may be adjusted through the biennial harvest specifications and management measures process.

(k) [Reserved]

* * * * *

7. In § 660.60, paragraphs (c) introductory text, (c)(1)(i), (c)(3), (d)(1)(ii), (d)(1)(vi), (h)(2) are revised and paragraph (c)(1)(v) is added to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) *Routine management measures.* Catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year, via this process, are implemented in paragraph (h) of this section, and in subparts C through G of this part, including Tables 1a through 1c, and 2a through 2c to subpart C, Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated ''routine,'' which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the **Federal Register** pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the **Federal Register**. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the **Federal Register**, offloading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) * * *

(i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, blackgill rockfish in the area south of 40°10′ N. lat., chilipepper, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the other flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11; Pacific whiting; lingcod; Pacific cod; spiny dogfish; longnose skate; cabezon in Oregon and California and ''other fish'' as a complex consisting of all groundfish species listed at § 660.11 and not otherwise listed as a distinct species or species group. In addition to the species and species groups listed above, sub-limits or aggregate limits may be specified, specific to the Shorebased IFQ Program, for the following species: big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

* * * * *

(v) Shorebased IFQ Program surplus carryover percentage. As specified at § 660.140(e)(5)(i), a percentage of surplus QP or IBQ pounds in a vessel account may be carried over from one year to the next. The percentage of surplus QP or IBQ pounds, that may be carried over may be modified on a biennial or more frequent basis, and may not be higher than 10 percent.

* * * * *

(3) *All fisheries, all gear types.*

(i) *Depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.70 through 660.74. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season. BRAs may be implemented in the Pacific whiting fishery: as an automatic action for species with a sector specific allocation, consistent with paragraph (d)(1) of this section; or as a routine action consistent with the purposes for implementing depth based management and the setting of closed areas as described in paragraph (c)(3)(i) of this section.

(ii) *Non-tribal deductions from the ACL.* Changes to the non-tribal amounts deducted from the TAC, ACLs, or ACT when specified, described at § 660.55 (b)(2) through (4) and specified in the footnotes to Tables 1a through 1c, and 2a through 2c, to subpart C, have been designated as routine to make fish that would otherwise go unharvested available to other fisheries during the fishing year. Adjustments may be made to provide additional harvest opportunities in groundfish fisheries when catch in scientific research activities, non-groundfish fisheries, and EFPs are lower than the amounts that were initially deducted off the TAC, ACL, or ACT when specified, during the biennial specifications. When recommending adjustments to the non-tribal deductions, the Council shall consider the allocation framework criteria outlined in the PCGFMP and the objectives to maintain or extend fishing and marketing opportunities taking into account the best available fishery information on sector needs.

(d) * * *

(1) * * *

(ii) Close one or more at-sea sectors of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached.

* * * * *

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4), when NMFS projects a sector-specific allocation will be reached before the sector's whiting allocation.

* * * * *

(h) * * *

(2) *Landing.* As stated at § 660.11 (in the definition of ''Land or landing''), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. All fish from a landing must be removed from the vessel before a new fishing trip begins, except for processing vessels fishing in the catcher/processor or mothership sectors of the Pacific whiting fishery. Transfer of fish at sea is prohibited under § 660.12, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a). Catcher vessels in the mothership sector must transfer all catch from a haul to the same vessel registered to an MS permit prior to the gear being set for a subsequent haul. Catch may not be transferred to a tender vessel.

* * * * *

8. In § 660.72, paragraph (j)(2475) is redesignated as (j)(247).

9. Section 660.73 is amended as follows:

a. Remove paragraphs (h)(58) and (h)(59),

b. Redesignate paragraphs (h)(60) through (h)(186) as (h)(61) through (h)(187), (h)(187) through (h)(191) as (h)(192) through (h)(196), (h)(192) through (h)(301) as (h)(200) through (h)(309),

c. Add paragraphs (h)(58) through (h)(60), (h)(188) through (h)(191), (h)(197) through (h)(199), and paragraph (l) to read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *

(h) * * *

(58) 46°58.36′ N. lat., 124°59.82′ W. long.;

(59) 46°56.80′ N. lat., 125°00.00′ W. long.;

(60) 46°56.62′ N. lat., 125°00.00′ W. long.;

* * * * *

(188) 39°49.10′ N. lat., 124°06.00′ W. long.;

(189) 39°48.94′ N. lat., 124°04.74′ W. long.;

(190) 39°48.60′ N. lat., 124°04.50′ W. long.;

(191) 39°47.95′ N. lat., 124°05.22′ W. long.;

* * * * *

(197) 39°31.64′ N. lat., 123°56.16′ W. long.;

(198) 39°31.40′ N. lat., 123°56.70′ W. long.;

(199) 39°32.35′ N. lat., 123°57.42′ W. long.;

* * * * *

(l) The 150 fm (274 m) depth contour used between the U.S. border with Canada and 40°10′ N. lat., modified to allow fishing in petrale sole areas, is defined by straight lines connecting all of the following points in the order stated:

(1) 48°14.96′ N. lat., 125°41.24′ W. long.;

(2) 48°12.89′ N. lat., 125°37.83′ W. long.;

(3) 48°11.49′ N. lat., 125°39.27′ W. long.;

(4) 48°10.00′ N. lat., 125°40.65′ W. long.;

(5) 48°08.72′ N. lat., 125°41.84′ W. long.;

(6) 48°07.00′ N. lat., 125°45.00′ W. long.;

(7) 48°06.13′ N. lat., 125°41.57′ W. long.;

(8) 48°05.00′ N. lat., 125°39.00′ W. long.;

(9) 48°04.15′ N. lat., 125°36.71′ W. long.;

(10) 48°03.00′ N. lat., 125°36.00′ W. long.;

(11) 48°01.65′ N. lat., 125°36.96′ W. long.;

(12) 48°01.00′ N. lat., 125°38.50′ W. long.;

(13) 47°57.50′ N. lat., 125°36.50′ W. long.;

(14) 47°56.53′ N. lat., 125°30.33′ W. long.;

(15) 47°57.28′ N. lat., 125°27.89′ W. long.;

(16) 47°59.00′ N. lat., 125°25.50′ W. long.;

(17) 48°01.77′ N. lat., 125°24.05′ W. long.;

(18) 48°02.08′ N. lat., 125°22.98′ W. long.;

(19) 48°03.00′ N. lat., 125°22.50′ W. long.;

(20) 48°03.46′ N. lat., 125°22.10′ W. long.;

(21) 48°04.29′ N. lat., 125°20.37′ W. long.;

(22) 48°02.00′ N. lat., 125°18.50′ W. long.;

(23) 48°00.01′ N. lat., 125°19.90′ W. long.;

(24) 47°58.75′ N. lat., 125°17.54′ W. long.;

(25) 47°53.50′ N. lat., 125°13.50′ W. long.;

(26) 47°48.88′ N. lat., 125°05.91′ W. long.;

(27) 47°48.50′ N. lat., 125°05.00′ W. long.;

(28) 47°45.98′ N. lat., 125°04.26′ W. long.;

(29) 47°45.00′ N. lat., 125°05.50′ W. long.;

(30) 47°42.11′ N. lat., 125°04.74′ W. long.;

(31) 47°39.00′ N. lat., 125°06.00′ W. long.;

(32) 47°35.53′ N. lat., 125°04.55′ W. long.;

(33) 47°30.90′ N. lat., 124°57.31′ W. long.;

(34) 47°29.54′ N. lat., 124°56.50′ W. long.;

(35) 47°29.50′ N. lat., 124°54.50′ W. long.;

(36) 47°28.57′ N. lat., 124°51.50′ W. long.;

(37) 47°25.00′ N. lat., 124°48.00′ W. long.;

(38) 47°23.95′ N. lat., 124°47.24′ W. long.;

(39) 47°23.00′ N. lat., 124°47.00′ W. long.;

(40) 47°21.00′ N. lat., 124°46.50′ W. long.;

(41) 47°18.20′ N. lat., 124°45.84′ W. long.;

(42) 47°18.50′ N. lat., 124°49.00′ W. long.;

(43) 47°19.17′ N. lat., 124°50.86′ W. long.;

(44) 47°18.07′ N. lat., 124°53.29′ W. long.;

(45) 47°17.78′ N. lat., 124°51.39′ W. long.;

(46) 47°16.81′ N. lat., 124°50.85′ W. long.;

(47) 47°15.96′ N. lat., 124°53.15′ W. long.;

(48) 47°14.31′ N. lat., 124°52.62′ W. long.;

(49) 47°11.87′ N. lat., 124°56.90′ W. long.;

(50) 47°12.39′ N. lat., 124°58.09′ W. long.;

(51) 47°09.50′ N. lat., 124°57.50′ W. long.;

(52) 47°09.00′ N. lat., 124°59.00′ W. long.;

(53) 47°06.06′ N. lat., 124°58.80′ W. long.;

(54) 47°03.62′ N. lat., 124°55.96′ W. long.;

(55) 47°02.89′ N. lat., 124°56.89′ W. long.;

(56) 47°01.04′ N. lat., 124°59.54′ W. long.;

(57) 46°58.47′ N. lat., 124°59.08′ W. long.;

(58) 46°58.36′ N. lat., 124°59.82′ W. long.;

(59) 46°56.80′ N. lat., 125°00.00′ W. long.;

(60) 46°56.62′ N. lat., 125°00.00′ W. long.;

(61) 46°57.09′ N. lat., 124°58.86′ W. long.;

(62) 46°55.95′ N. lat., 124°54.88′ W. long.;

(63) 46°54.79′ N. lat., 124°54.14′ W. long.;

(64) 46°58.00′ N. lat., 124°50.00′ W. long.;

(65) 46°54.50′ N. lat., 124°49.00′ W. long.;

(66) 46°54.53′ N. lat., 124°52.94′ W. long.;

(67) 46°49.52′ N. lat., 124°53.41′ W. long.;

(68) 46°42.24′ N. lat., 124°47.86′ W. long.;

(69) 46°39.50′ N. lat., 124°42.50′ W. long.;

(70) 46°38.17′ N. lat., 124°41.50′ W. long.;

(71) 46°37.50′ N. lat., 124°41.00′ W. long.;

(72) 46°36.50′ N. lat., 124°38.00′ W. long.;

(73) 46°33.85′ N. lat., 124°36.99′ W. long.;

(74) 46°33.50′ N. lat., 124°29.50′ W. long.;

(75) 46°32.00′ N. lat., 124°31.00′ W. long.;

(76) 46°30.53′ N. lat., 124°30.55′ W. long.;

(77) 46°25.50′ N. lat., 124°33.00′ W. long.;

(78) 46°23.00′ N. lat., 124°35.00′ W. long.;

(79) 46°21.05′ N. lat., 124°37.00′ W. long.;

(80) 46°20.64′ N. lat., 124°36.21′ W. long.;

(81) 46°20.36′ N. lat., 124°37.85′ W. long.;

(82) 46°19.48′ N. lat., 124°38.35′ W. long.;

(83) 46°17.87′ N. lat., 124°38.54′ W. long.;

(84) 46°16.15′ N. lat., 124°25.20′ W. long.;

(85) 46°16.00′ N. lat., 124°23.00′ W. long.;

(86) 46°14.87′ N. lat., 124°26.15′ W. long.;

(87) 46°13.37′ N. lat., 124°31.36′ W. long.;

(88) 46°12.08′ N. lat., 124°38.39′ W. long.;

(89) 46°09.46′ N. lat., 124°40.64′ W. long.;

(90) 46°07.29′ N. lat., 124°40.89′ W. long.;

(91) 46°02.76′ N. lat., 124°44.01′ W. long.;

(92) 46°01.22′ N. lat., 124°43.47′ W. long.;

(93) 45°51.82′ N. lat., 124°42.89′ W. long.;

(94) 45°46.00′ N. lat., 124°40.88′ W. long.;

(95) 45°45.95′ N. lat., 124°40.72′ W. long.;

(96) 45°45.21′ N. lat., 124°41.70′ W. long.;

(97) 45°42.72′ N. lat., 124°41.22′ W. long.;
(98) 45°34.50′ N. lat., 124°30.28′ W. long.;
(99) 45°21.10′ N. lat., 124°23.11′ W. long.;
(100) 45°20.25′ N. lat., 124°22.92′ W. long.;
(101) 45°09.69′ N. lat., 124°20.45′ W. long.;
(102) 45°03.83′ N. lat., 124°23.30′ W. long.;
(103) 44°56.41′ N. lat., 124°27.65′ W. long.;
(104) 44°44.47′ N. lat., 124°37.85′ W. long.;
(105) 44°37.17′ N. lat., 124°38.60′ W. long.;
(106) 44°35.55′ N. lat., 124°39.27′ W. long.;
(107) 44°31.81′ N. lat., 124°39.60′ W. long.;
(108) 44°31.48′ N. lat., 124°43.30′ W. long.;
(109) 44°12.67′ N. lat., 124°57.87′ W. long.;
(110) 44°08.30′ N. lat., 124°57.84′ W. long.;
(111) 44°07.38′ N. lat., 124°57.87′ W. long.;
(112) 43°57.42′ N. lat., 124°57.20′ W. long.;
(113) 43°52.52′ N. lat., 124°49.00′ W. long.;
(114) 43°51.55′ N. lat., 124°37.49′ W. long.;
(115) 43°47.83′ N. lat., 124°36.43′ W. long.;
(116) 43°31.79′ N. lat., 124°36.80′ W. long.;
(117) 43°29.34′ N. lat., 124°36.77′ W. long.;
(118) 43°26.37′ N. lat., 124°39.53′ W. long.;
(119) 43°20.83′ N. lat., 124°42.39′ W. long.;
(120) 43°16.15′ N. lat., 124°44.36′ W. long.;
(121) 43°09.33′ N. lat., 124°45.35′ W. long.;
(122) 43°08.77′ N. lat., 124°49.82′ W. long.;
(123) 43°08.83′ N. lat., 124°50.93′ W. long.;
(124) 43°05.89′ N. lat., 124°51.60′ W. long.;
(125) 43°04.60′ N. lat., 124°53.02′ W. long.;
(126) 43°02.64′ N. lat., 124°52.01′ W. long.;
(127) 43°00.39′ N. lat., 124°51.77′ W. long.;
(128) 42°58.00′ N. lat., 124°52.99′ W. long.;
(129) 42°57.56′ N. lat., 124°54.10′ W. long.;
(130) 42°53.93′ N. lat., 124°54.60′ W. long.;
(131) 42°53.26′ N. lat., 124°53.94′ W. long.;
(132) 42°52.31′ N. lat., 124°50.76′ W. long.;
(133) 42°50.00′ N. lat., 124°48.97′ W. long.;
(134) 42°47.78′ N. lat., 124°47.27′ W. long.;
(135) 42°46.31′ N. lat., 124°43.60′ W. long.;
(136) 42°41.63′ N. lat., 124°44.07′ W. long.;
(137) 42°40.50′ N. lat., 124°43.52′ W. long.;
(138) 42°38.83′ N. lat., 124°42.77′ W. long.;
(139) 42°35.36′ N. lat., 124°43.22′ W. long.;
(140) 42°32.78′ N. lat., 124°44.68′ W. long.;
(141) 42°32.02′ N. lat., 124°43.00′ W. long.;
(142) 42°30.54′ N. lat., 124°43.50′ W. long.;
(143) 42°28.16′ N. lat., 124°48.38′ W. long.;
(144) 42°18.26′ N. lat., 124°39.01′ W. long.;
(145) 42°13.66′ N. lat., 124°36.82′ W. long.;
(146) 42°00.00′ N. lat., 124°35.99′ W. long.;
(147) 41°47.80′ N. lat., 124°29.41′ W. long.;
(148) 41°41.67′ N. lat., 124°29.46′ W. long.;
(149) 41°22.80′ N. lat., 124°29.10′ W. long.;
(150) 41°13.29′ N. lat., 124°23.31′ W. long.;
(151) 41°06.23′ N. lat., 124°22.62′ W. long.;
(152) 40°55.60′ N. lat., 124°26.04′ W. long.;
(153) 40°53.97′ N. lat., 124°26.16′ W. long.;
(154) 40°53.94′ N. lat., 124°26.10′ W. long.;
(155) 40°50.31′ N. lat., 124°26.16′ W. long.;
(156) 40°49.82′ N. lat., 124°26.58′ W. long.;
(157) 40°49.62′ N. lat., 124°26.57′ W. long.;
(158) 40°45.72′ N. lat., 124°30.00′ W. long.;
(159) 40°40.56′ N. lat., 124°32.11′ W. long.;
(160) 40°38.87′ N. lat., 124°30.18′ W. long.;
(161) 40°38.38′ N. lat., 124°30.18′ W. long.;
(162) 40°37.33′ N. lat., 124°29.27′ W. long.;
(163) 40°35.60′ N. lat., 124°30.49′ W. long.;
(164) 40°37.38′ N. lat., 124°37.14′ W. long.;
(165) 40°36.03′ N. lat., 124°39.97′ W. long.;
(166) 40°31.58′ N. lat., 124°40.74′ W. long.;
(167) 40°30.30′ N. lat., 124°37.63′ W. long.;
(168) 40°28.22′ N. lat., 124°37.23′ W. long.;
(169) 40°24.86′ N. lat., 124°35.71′ W. long.;
(170) 40°23.01′ N. lat., 124°31.94′ W. long.;
(171) 40°23.39′ N. lat., 124°28.64′ W. long.;
(172) 40°22.29′ N. lat., 124°25.25′ W. long.;
(173) 40°21.90′ N. lat., 124°25.18′ W. long.;
(174) 40°22.02′ N. lat., 124°28.00′ W. long.;
(175) 40°21.34′ N. lat., 124°29.53′ W. long.;
(176) 40°19.74′ N. lat., 124°28.95′ W. long.;
(177) 40°18.13′ N. lat., 124°27.08′ W. long.;
(178) 40°17.45′ N. lat., 124°25.53′ W. long.;
(179) 40°17.97′ N. lat., 124°24.12′ W. long.;
(180) 40°15.96′ N. lat., 124°26.05′ W. long.;
(181) 40°16.90′ N. lat., 124°34.20′ W. long.;
(182) 40°16.29′ N. lat., 124°34.50′ W. long.;
(183) 40°14.91′ N. lat., 124°33.60′ W. long.;
(184) 40°10.00′ N. lat., 124°22.96′ W. long.;

10. Section 660.74 is amended as follows:

a. Remove paragraphs (g)(87),

b. Redesignate paragraphs (g)(88) through (g)(257) as (g)(89) through (g)(258),

c. Add paragraphs (g)(87) through (g)(88), to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.

* * * * *

(g) * * *

(87) 44°21.73′ N. lat., 124°49.82′ W. long.;

(88) 44°17.57′ N. lat., 124°55.04′ W. long.;

* * * * *

11. Tables 1a through 1d and 2a through 2d, Subpart C, are revised to read as follows:

BILLING CODE 3510–22–P

Table 1a. To Part 660, Subpart C- 2013, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	Fishery HG b/
Arrowtooth flounder c/	Coastwide	7,391	6,157	6,157	4,070
Black d/ e/	N of 46°16' N. lat.	430	411	411	397
	S of 46°16' N. lat.	1,159	1,108	1,000	1,000
Bocaccio f/	S of 40°10' N. lat.	884	845	320	311.6
Cabezon g/ h/	46°16' to 42° N. lat.	49	47	47	47
	S of 42° N. lat.	170	163	163	163
California scorpionfish i/	S of 34°27' N. lat.	126	120	120	118
Canary rockfish j/	Coastwide	752	719	116	98.5
Chilipepper k/	S of 40°10' N. lat.	1,768	1,690	1,690	1,466
Cowcod l/	S of 40°10' N. lat.	11	9	3	2.9
Darkblotched rockfish m/	Coastwide	541	517	317	296.2
Dover sole n/	Coastwide	92,955	88,865	25,000	23,410
English sole o/	Coastwide	7,129	6,815	6,815	6,712
Lingcod p/ q/	N of 40° 10' N. lat.	3,334	3,036	3,036	2,758
	S of 40° 10' N. lat.	1,334	1,111	1,111	1,102
Longnose skate r/	Coastwide	2,902	2,774	2,000	1,928
Longspine thornyhead s/	N of 34°27' N. lat.	3,391	2,825	2,009	1,963
	S of 34°27' N. lat.			356	353
Minor nearshore rockfish north t/	N of 40°10' N. lat.	110	94	94	94
Minor shelf rockfish north u/	N of 40°10' N. lat.	2,183	1,920	968	903
Minor slope rockfish north v/	N of 40°10' N. lat.	1,518	1,381	1,160	1,098
Minor nearshore rockfish south w/	S of 40°10' N. lat.	1,164	1,005	990	990
Minor shelf rockfish south x/	S of 40°10' N. lat.	1,910	1,617	714	668.0
Minor slope rockfish south y/	S of 40°10' N. lat.	681	618	618	597
Other fish z/	Coastwide	6,832	4,717	4,717	4,540
Other flatfish aa/	Coastwide	10,060	6,982	4,884	4,682
Pacific cod bb/	Coastwide	3,200	2,221	1,600	1,191
Pacific ocean perch (POP) cc/	N of 40° 10' N. lat.	844	807	150	133.5
Pacific whiting dd/	Coastwide	p/	p/	p/	p/
Petrale sole ee/	Coastwide	2,711	2,592	2,592	2,358.0
Sablefish ff/ gg/	N of 36° N. lat.	6,621	6,045	4,012	See Table 1c
	S of 36° N. lat.			1,439	1,434
Shortbelly hh/	Coastwide	6,950	5,789	50	48
Shortspine thornyhead ii/	N of 34°27' N. lat.	2,333	2,230	1,540	1,481
	S of 34°27' N. lat.			397	355
Splitnose jj/	S of 40°10' N. lat.	1,684	1,610	1,610	1,598
Starry flounder kk/	Coastwide	1,825	1,520	1,520	1,513
Widow ll/	Coastwide	4,841	4,598	1,500	1,411
Yelloweye rockfish mm/	Coastwide	51	43	18	12.2
Yellowtail nn/	N of 40°10' N. lat.	4,579	4,378	4,378	3,677

a/ ACLs, ACTs and HGs are specified as total catch values.

b/Fishery harvest guideline means the harvest guideline or quota after subtracting from the ACL or ACT Pacific Coast treaty Indian tribes allocations or projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs.

c/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 7,391 mt is based on the 2007 assessment with an $F_{30\%}$ F_{MSY} proxy. The ABC of 6,157 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. 2,087.39 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.39 mt), resulting in a fishery HG of 4,070 mt.

d/ Black rockfish north (Washington). A stock assessment was prepared for black rockfish north of 45°46' N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16 N. lat. is 430 mt and is 97 percent of the OFL from the assessed area, based on the area distribution of historical catch. The ABC of 411 mt for the north is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL was set equal to the ABC, since the stock is above $B_{40\%}$. 14 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 397 mt.

e/ Black rockfish south (Oregon and California). A stock assessment was prepared for black rockfish south of 45°46 N. lat. (Cape Falcon, Oregon) to Central California in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment prepared for black rockfish north of 45°46' N. lat. The resulting OFL for the area south of 46°16 N. lat. is 1,159 mt. The ABC of 1,108 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2013 and 2014 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock biomass above $B_{40\%}$. There are no deductions from the ACL, thus the fishery HG is equal to the ACL. The black rockfish ACL in the area south of 46°16' N. lat. (Columbia River), is subdivided with separate HGs being set for the waters off Oregon (580 mt/58 percent) and for the waters off California (420 mt/42 percent).

f/ Bocaccio. A bocaccio stock assessment update was prepared in 2011 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10' N. lat. and within the minor shelf rockfish complex north of 40°10' N. lat. Historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10' N. lat. The bocaccio stock was estimated to be at 26 percent of its unfished biomass in 2011. The OFL of 884 mt is based on the 2011 stock assessment STAT model with an F_{MSY} proxy of $F_{50\%}$. The ABC of 845 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 320 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (6.0 mt) and research catch (1.7 mt), resulting in a fishery HG of 311.6 mt. The California recreational fishery has an HG of 163.5.

g/ Cabezon (Oregon). A cabezon stock assessment was prepared in 2009. The cabezon biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. No deductions are made from the ACL, so the fishery HG is equal to the ACL at 47 mt. Cabezon in waters off Oregon were removed from the "other fish" complex in 2011.

h/ Cabezon (California). A cabezon stock assessment was prepared in 2009. The cabezon biomass in waters off California was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 170 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 163 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. No deductions are made from the ACL, so the fishery HG is equal to the ACL at 163 mt.

i/ California scorpionfish was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 126 mt is based on the 2005 assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 120 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 118 mt.

j/ Canary rockfish. A canary rockfish stock assessment update was prepared in 2011 and the stock was estimated to be at 24 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 752 mt is based on the new assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 719 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 116 mt is based on a rebuilding plan with a target year to rebuild of 2030 and a SPR harvest rate of 88.7 percent. 17.5 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.5 mt) and research catch (4.5 mt) resulting in a fishery HG of 98.52 mt. Recreational HGs are being specified as follows: Washington recreational 3.1; Oregon recreational 10.8 mt; and California recreational 22.4 mt.

k/ Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass coastwide in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10 N. lat. and within the minor shelf rockfish complex north of 40°10' N. lat. Projected OFLs are stratified north and south of 40°10' N. latitude based on the average 1998-2008 assessed area catch, which is 93 percent for the area south of 40°10' N. latitude and 7 percent for the area north of 40°10' N. latitude. South of 40°10' N. lat., the OFL of 1,768 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,690 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. 224 mt is deducted from the ACL for the incidental open access fishery (5 mt), EFP fishing (210 mt), and research catch (9 mt), resulting in a fishery HG of 1,466 mt.

l/ Cowcod. A stock assessment update prepared in 2009 estimated the stock to be 5 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10' N. lat. OFL of 11 mt. The ABC for the area south of 40°10' N. lat. is 9 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.40). The unassessed portion of the stock in the Monterey area was considered a category 3 stock, with a contribution to the ABC of 3 mt, which is a 31 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. 0.1 mt is deducted from the ACL for the amount anticipated to be taken during research activity (0.1 mt) and EFP catch (0.03 mt) which results in a fishery HG of 2.9 mt.

m/ Darkblotched rockfish. A stock assessment update was prepared in 2011, and the stock was estimated to be at 30.2 percent of its unfished biomass in 2011. The OFL is projected to be 541 mt and is based on the 2011 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 517 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 317 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (18.4 mt), EFP catch (0.2 mt) and research catch (2.1 mt), resulting in a fishery HG of 296.2 mt.

n/ Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 92,955 mt is based on the results of the 2011 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 88,865 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

o/ English sole. A stock assessment update was prepared in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 7,129 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 6,815 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. 103 mt is deducted from the ACL for the

Tribal fishery (91 mt), the incidental open access fishery (7 mt) and research catch (5 mt), resulting in a fishery HG of 6,712 mt.

p/ Lingcod north. A lingcod stock assessment was prepared in 2009. The lingcod biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 3,334 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 3,036 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and a 17 percent reduction from the OFL (σ=0.72/P*=0.40) for the area between 42° N. lat. and 40°10'N. lat. as it's a category 2 stock. The ACL was set equal to the ABC. 277.67 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt) and research catch (11.67 mt), resulting in a fishery HG of 2,758 mt.

q/ Lingcod south . A lingcod stock assessment was prepared in 2009. The lingcod biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 1,334 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 1,111 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL was set equal to the ABC. 9 mt is deducted from the ACL for the incidental open access fishery (7 mt) and EFP fishing (2 mt), resulting in a fishery HG of 1,102 mt.

r/ Longnose skate. A stock assessment was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,902 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,774 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45)as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock. 72.18 mt is deducted from the ACL for the Tribal fishery (56 mt), incidental open access fishery (3 mt), and research catch (13.18 mt), resulting in a fishery HG of 1,928 mt.

s/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,391 mt is based on the 2005 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 2,825 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27' N. lat., the ACL is 2,009 mt, and is 79 percent of the coastwide OFL for the biomass found in that area reduced by an additional 25 percent as a precautionary adjustment. 46 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13 mt) resulting in a fishery HG of 1,963 mt. For that portion of the stock south of 34°27' N. lat. the ACL is 356 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 353 mt.

t/ Minor nearshore rockfish north. The OFL of 110 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 94 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the complex ABC. There are no deductions from the ACL, thus the fishery HG is equal to the ACL at 94 mt.

u/ Minor shelf rockfish north. The OFL of 2,183 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (greenspotted rockfish between 40°10' to 42° N. lat. and greenstriped rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,920 mt is the summed contribution of the ABCs for the component species. The ACL of 968 mt is the same as the 2012 ACL. 65.24 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt) and research catch (6.24 mt) resulting in a fishery HG of 903 mt.

v/ Minor slope rockfish north. The OFL of 1,518 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the northern minor slope rockfish complex is based on a sigma value of 0.36 for category 1 stocks (splitnose rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,381 mt is the summed contribution of the ABCs for the component species. The ACL of 1,160 is the same as the 2012 ACL. 62 mt is deducted from the ACL for the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt) and research catch (6 mt), resulting in a fishery HG of 1,098 mt.

w/ Minor nearshore rockfish south. The OFL of 1,164 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern minor nearshore rockfish complex is based on a sigma value

of 0.36 for category 1 stocks (gopher rockfish north of 34°27' N. lat.), 0.72 for category 2 stocks (blue rockfish north of 34°27' N. lat.) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor nearshore rockfish south ABC, which is the summed contribution of the ABCs for the component species within the complex, is 1,005 mt. The ACL is 990 mt; the same as the 2012 ACL. There are no deductions from the ACL, resulting in a fishery HG of 990 mt. Blue rockfish south of 42° N. latitude has a species-specific HG of 236 mt.

x/ Minor shelf rockfish south. The OFL of 1,910 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern minor shelf rockfish complex is based on a sigma value of 0.72 for category 2 stocks (greenspotted and greenstriped rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,617 mt is the summed contribution of the ABCs for the component species. The ACL of 714 mt is the same as the 2012 ACL. 46 mt is deducted from the ACL for the incidental open access fishery (9 mt), EFP catch (31 mt) and research catch (6 mt), resulting in a fishery HG of 668 mt.

y/ Minor slope rockfish south. The OFL of 681 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern minor slope rockfish complex is based on a sigma value of 0.72 for category 2 stocks (bank and blackgill rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 618 mt is the summed contribution of the ABCs for the component species. The ACL is equal to the ABC. 21 mt is deducted from the ACL for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a fishery HG of 597 mt. Blackgill rockfish has species-specific HGs: 26.4 mt for the limited entry fixed gear fishery; 17.6 mt for the open access fishery.

z/ "Other fish" is composed entirely of groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish, and most of these species are unassessed, with the exception of spiny dogfish, which was assessed in 2011 and is a category 2 stock. The OFL of 6,832 mt is the sum of the OFL contributions for the component species within the complex. The OFL contribution for spiny dogfish is projected from the 2011 assessment using an $F_{45\%}$ F_{MSY} proxy harvest rate. The ABC of 4,717 mt is calculated by applying a P* of 0.40 and a sigma of 1.44 to the OFLs calculated for the category 3 stocks (i.e., all stocks other than spiny dogfish) and a P* of 0.30 and a sigma of 0.72 to the OFL calculated for spiny dogfish. The resulting ABC for the complex is the summed contribution of the ABCs calculated for the component stocks. The ACL is set equal to the ABC. 177 mt is deducted from the ACL for the Tribal fishery (112 mt), the incidental open access fishery (50 mt), EFP catch (3 mt) and research catch (12 mt), resulting in an "other fish" fishery HG of 4,540 mt.

aa/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABCs/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,060 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 6,982 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as the complex is composed of category 3 stocks. The ACL of 4,884 mt is the 2011 and 2012 ACL carried forward as there have been no significant changes in the status or management of stocks within the complex. 202 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (17 mt), resulting in a fishery HG of 4,682 mt.

bb/ Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 409.04 mt is deducted from the ACL for the Tribal fishery (400 mt), research fishing (7.04 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,191 mt.

cc/ Pacific Ocean Perch (POP). A POP stock assessment was prepared in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 844 mt for the area north of 40°10' N. lat. is based on the 2011 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 807 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 150 mt is based on a rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 16.5 mt is deducted from the ACL for the Tribal fishery (10.9 mt), open access fishery (0.4 mt) and research catch (5.2 mt), resulting in a fishery HG of 133.5 mt.

dd/ Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2013 meeting.

ee/ Petrale sole. A petrale sole stock assessment was prepared for 2011. In 2011 the petrale sole stock was estimated to be at 18 percent of its unfished biomass. The OFL of 2,711 mt is based on the 2011 assessment with an $F_{30\%}$ F_{MSY}

proxy. The ABC of 2,592 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC. 234 mt is deducted from the ACL for the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (11.6 mt), resulting in a fishery HG of 2,358 mt.

ff/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 6,621 mt is based on the 2011 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The coastwide ABC of 6,045 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40-10 harvest policy was applied to the ABC to derive a coastwide ACL value. Then the ACL value was apportioned, north and south of 36° N. lat., using the average of annual swept area biomass (2003-2010) from the NMFS NWFSC trawl survey, between the northern and southern areas with 73.6 percent going to the area north of 36° N. lat. and 26.4 percent going to the area south of 36° N. lat. The northern ACL is 4,012 mt and is reduced by 401 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 401 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

gg/ Sablefish south. The ACL for the area south of 36° N. lat. is 1,439 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL for the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,434 mt.

hh/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2013 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings and is in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL for research catch, resulting in a fishery HG of 48 mt.

ii/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,333 mt is based on the 2005 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,230 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. For the portion of the stock that is north of 34°27' N. lat., the ACL is 1,540 mt. The northern ACL is 66 percent of the coastwide OFL for the portion of the biomass found north of 34°27' N. lat. 59.22 mt is deducted from the ACL for the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7.22 mt) resulting in a fishery HG of 1,481 mt for the area north of 34°27' N. lat. For that portion of the stock south of 34°27' N. lat., the ACL is 397 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27' N. lat. reduced by 50 percent as a precautionary adjustment. 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt), resulting in a fishery HG of 355 mt for the area south of 34°27' N. lat.

jj/ Splitnose rockfish. A coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and with species-specific harvest specifications south of 40°10' N. lat. The OFLs were apportioned north and south based on the average 1916-2008 assessed area catch resulting in 64.2 percent stock-specific OFL south of 40°10' N. lat, and 35.8 percent for the contribution of splitnose rockfish to the northern minor slope rockfish complex OFL. South of 40°10 N. lat., the OFL of 1,684 mt is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,610 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. 12 mt is deducted from the ACL for research catch (9 mt) and EFP catch (3 mt), resulting in a fishery HG of 1,598 mt.

kk/ Starry Flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2013, the coastwide OFL of 1,825 mt is based on the 2005 assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,520 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. 7 mt is deducted from the ACL for the Tribal fishery (2 mt)and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,513 mt.

ll/ Widow rockfish. The stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 4,841 mt is based on the 2011 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,598 mt is a 5 percent reduction from the OFL (σ=0.41/P*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the estimated variance in estimated biomass was greater than the 0.36 used as a proxy for other

category 1 stocks. A constant catch strategy will be used with an ACL of 1,500 mt. 89.2 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (89.2 mt), EFP catch (18 mt) and research catch (7.9 mt), resulting in a fishery HG of 1,411 mt.

mm/ Yelloweye rockfish. A stock assessment update was prepared in 2011. The stock was estimated to be at 21.3 percent of its unfished biomass in 2011. The 51 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 18 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.82 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.02 mt) and research catch (3.3 mt) resulting in a fishery HG of 12.2 mt. Recreational HGs are being established: Washington, 2.9; Oregon, 2.6 mt; and California, 3.4 mt.

nn/ Yellowtail rockfish. A yellowtail rockfish stock assessment update was last prepared in 2005 for the area north of 40°10' N. latitude to the U.S-Canadian border. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,579 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,378 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. 701.49 mt is deducted from the ACL for the Tribal fishery (677 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (11.49 mt), resulting in a fishery HG of 3,677 mt.

Table 1b. To Part 660, Subpart C - 2013, Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Fishery HG	Allocations			
		Trawl		Non-trawl	
		%	Mt	%	Mt
Arrowtooth flounder	4,070	95%	3,866	5%	203
Bocaccio - S of 40°10' N. lat. a/	311.6	NA	74.9	NA	236.7
Canary rockfish a/ b/	98.5	NA	52.5	NA	46.0
Chilipepper - S of 40°10 N. Lat.	1,466	75%	1,100	25%	367
Cowcod - S of 40°10' N. lat. a/	2.9	NA	1.0	NA	1.9
Darkblotched rockfish c/	296.2	95%	281.4	5%	14.8
Dover sole	23,410	95%	22,240	5%	1,171
English sole	6,712	95%	6,376	5%	336
Lingcod					
N of 40°10' N. lat.	2,758	45%	1,241	55%	1,517
S of 40°10' N. lat.	1,102	45%	496	55%	606
Longnose Skate a/	1,928	90%	1,735	10%	193
Longspine thornyhead					
N of 34°27' N. lat.	1,963	95%	1,865	5%	98
Minor shelf rockfish north a/	903	60.2%	543	39.8%	359
Minor shelf rockfish south a/	668	12.2%	81	87.8%	587
Minor slope rockfish north	1,098	81%	889	19%	209
Minor slope rockfish south	597	63%	376	37%	221
Other flatfish	4,682	90%	4,214	10%	468
Pacific cod	1,191	95%	1,131	5%	60
POP - N of 40°10' N. lat. d/	133.5	95%	126.8	5%	6.7
Pacific whiting	TBA	100%	TBA	0%	TBA
Petrale sole a/	2,358.0	NA	2323.0	NA	35.0
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,434	42%	602	58%	832
Shortspine thornyhead					
N of 34°27' N. lat.	1,481	95%	1,407	5%	74
S of 34°27' N. lat.	355	NA	50	NA	305
Splitnose - S of 40°10 N. Lat.	1,598	95%	1,518	5%	80
Starry Flounder	1,513	50%	757	50%	757
Widow e/	1,411	91%	1,284	9%	127
Yelloweye rockfish a/	12.2	NA	1.0	NA	11.2
Yellowtail - N of 40°10 N. Lat.	3,677	88%	3,235	12%	441

a/ Allocations decided through the biennial specification process.

b/ 12.6 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.2 mt for the mothership fishery, and 7.4 mt for the catcher/processor fishery.

c/ 9 percent (25.3 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 10.6 mt for the shorebased IFQ fishery, 6.1 mt for the mothership fishery, and 8.6 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

d/ 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

Table 1c. To Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2013

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal	Research				%	Mt	%	MT b/
2013	4,012	401	26	6.1	4	3,575	90.6%	3,239	9.4%	336

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2013	3,239	1,878	50	1,828	1,360	1,156	204

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 395 mt in 2013.

b/ Of the Open access HG the annual amount estimated to be taken in the incidental OA fishery is 35 mt.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

Table 1d. To Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2013

Species or Species Complex	Area	Set Aside (mt)
Arrowtooth Flounder	Coastwide	20
BOCACCIO	S. of 40°10 N. lat.	NA
CANARY ROCKFISH a/	Coastwide	Allocation
Chilipepper	S. of 40°10 N. lat.	NA
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED b/	Coastwide	Allocation
Dover Sole	Coastwide	5
English Sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose Skate	Coastwide	5
Longspine Thornyhead	N. of 34°27 N. lat.	5
Longspine Thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	520
Other Flatfish	Coastwide	20
Pacific Cod	Coastwide	5
Pacific Halibut b/	Coastwide	10
PACIFIC OCEAN PERCH a/	N. of 40°10 N. lat.	Allocation
Pacific Whiting	Coastwide	Allocation
Petrale Sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine Thornyhead	N. of 34°27 N. lat.	20
Shortspine Thornyhead	S. of 34°27 N. lat.	NA
Starry Flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
YELLOWEYE	Coastwide	0
Yellowtail	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.
b/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to 5 mt each).

Table 2a. To Part 660, Subpart C- 2014, and Beyond, Specifications of OFL, ABC, ACL, ACT and Fishery Harvest guidelines(weights in metric tons).

Species	Area	OFL	ABC	ACL a/	Fishery HG b/
Arrowtooth flounder c/	Coastwide	6,912	5,758	5,758	3,671
Black d/ e/	N of 46°16' N. lat.	428	409	409	395
	S of 46°16' N. lat.	1,166	1,115	1,000	1,000
Bocaccio f/	S of 40°10' N. lat.	881	842	337	328.6
Cabezon g/ h/	46°16' to 42° N. lat.	49	47	47	47
	S of 42° N. lat.	165	158	158	158
California scorpionfish i/	S of 34°27' N. lat.	122	117	117	115
Canary rockfish j/	Coastwide	741	709	119	101.5
Chilipepper k/	S of 40°10' N. lat.	1,722	1,647	1,647	1,423
Cowcod l/	S of 40°10' N. lat.	12	9	3	2.9
Darkblotched rockfish m/	Coastwide	553	529	330	309.2
Dover sole n/	Coastwide	77,774	74,352	25,000	23,410
English sole o/	Coastwide	5,906	5,646	5,646	5,543
Lingcod p/ q/	N of 40° 10' N. lat.	3,162	2,878	2,878	2,600
	S of 40° 10' N. lat.	1,276	1,063	1,063	1,054
Longnose skate r/	Coastwide	2,816	2,692	2,000	1,928
Longspine thornyhead s/	N of 34°27' N. lat.	3,304	2,752	1,958	1,912
	S of 34°27' N. lat.			347	344
Minor nearshore rockfish north t/	N of 40°10' N. lat.	110	94	94	94
Minor shelf rockfish north u/	N of 40°10' N. lat.	2,195	1,932	968	903
Minor slope rockfish north v/	N of 40°10' N. lat.	1,553	1,414	1,160	1,098
Minor nearshore rockfish south w/	S of 40°10' N. lat.	1,160	1,001	990	990
Minor shelf rockfish south x/	S of 40°10' N. lat.	1,913	1,620	714	668.0
Minor slope rockfish south y/	S of 40°10' N. lat.	685	622	622	601
Other fish z/	Coastwide	6,802	4,697	4,697	4,520
Other flatfish aa/	Coastwide	10,060	6,982	4,884	4,682
Pacific cod bb/	Coastwide	3,200	2,221	1,600	1,191
Pacific ocean perch (POP) cc/	N of 40° 10' N. lat.	838	801	153	136.5
Pacific whiting dd/	Coastwide	p/	p/	p/	p/
Petrale sole ee/	Coastwide	2,774	2,652	2,652	2,418.0
Sablefish ff/ gg/	N of 36° N. lat.	7,158	6,535	4,349	See Table 1c
	S of 36° N. lat.			1,560	1,555
Shortbelly hh/	Coastwide	6,950	5,789	50	48
Shortspine thornyhead ii/	N of 34°27' N. lat.	2,310	2,208	1,525	1,466
	S of 34°27' N. lat.			393	351
Splitnose jj/	S of 40°10' N. lat.	1,747	1,670	1,670	1,658
Starry flounder kk/	Coastwide	1,834	1,528	1,528	1,521
Widow ll/	Coastwide	4,435	4,212	1,500	1,411
Yelloweye rockfish mm/	Coastwide	51	43	18	12.2
Yellowtail nn/	N of 40°10' N. lat.	4,584	4,382	4,382	3,681

a/ ACLs, ACTs and HGs are specified as total catch values.

b/Fishery harvest guidelines means the harvest guideline or quota after subtracting from the ACL or ACT Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs.

c/ Arrowtooth flounder. The stock was last assessed in 2007 and was estimated to be at 79 percent of its unfished biomass in 2007. The OFL of 6,912 mt is based on the 2007 assessment with an $F_{30\%}$ F_{MSY} proxy. The ABC of 5,758 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. Because the stock is above $B_{25\%}$, the ACL is set equal to the ABC. 2,087.39 mt is deducted from the ACL for the Tribal fishery (2,041 mt), the incidental open access fishery (30 mt), and research catch (16.39 mt), resulting in a fishery HG of 3,671 mt.

d/ Black rockfish north (Washington). A stock assessment was prepared for black rockfish north of 45°46' N. lat. (Cape Falcon, Oregon) in 2007. The biomass in the north was estimated to be at 53 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$. The resulting OFL for the area north of 46°16 N. lat. is 428 mt and is 97 percent of the OFL from the assessed area based on the area distribution of historical catch. The ABC of 409 mt for the north is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL was set equal to the ABC since the stock is above $B_{40\%}$. 14 mt is deducted from the ACL for the Tribal fishery, resulting in a fishery HG of 395 mt.

e/ Black rockfish south (Oregon and California). A stock assessment was prepared for black rockfish south of 45°46 N. lat. (Cape Falcon, Oregon) to Central California in 2007. The biomass in the south was estimated to be at 70 percent of its unfished biomass in 2007. The OFL from the assessed area is based on the 2007 assessment with a harvest rate proxy of $F_{50\%}$ plus 3 percent of the OFL from the stock assessment prepared for black rockfish north of 45°46' N. lat. The resulting OFL for the area south of 46°16 N. lat. is 1,166 mt. The ABC of 1,115 mt and is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 2013 and 2014 ACL is 1,000 mt, which maintains the constant catch strategy designed to keep the stock biomass above $B_{40\%}$. There are no deductions from the ACL thus the fishery HG is equal to the ACL. The black rockfish ACL, in the area south of 46°16' N. lat. (Columbia River), is subdivided with separate HGs being set for waters off Oregon (580 mt/58 percent) and for waters off California (420 mt/42 percent).

f/ Bocaccio. A bocaccio stock assessment update was prepared in 2011 for the bocaccio stock between the U.S.-Mexico border and Cape Blanco. The stock is managed with stock-specific harvest specifications south of 40°10' N. lat. and within the minor shelf rockfish complex north of 40°10 N. lat. Historical catch distribution of approximately 6 percent was used to apportion the assessed stock to the area north of 40°10' N. lat. The bocaccio stock was estimated to be at 26 percent of its unfished biomass in 2011. The OFL of 881 mt is based on the 2011 stock assessment STAT model with an F_{MSY} proxy of $F_{50\%}$. The ABC of 842 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The 337 mt ACL is based on a rebuilding plan with a target year to rebuild of 2022 and an SPR harvest rate of 77.7 percent. 8.4 mt is deducted from the ACL for the incidental open access fishery (0.7 mt), EFP catch (6.0 mt) and research catch (1.7 mt), resulting in a fishery HG of 328.6 mt. The California recreational fishery has an HG of 172.5 mt.

g/ Cabezon (Oregon). A cabezon stock assessment was prepared in 2009. The cabezon biomass in waters off Oregon was estimated to be at 52 percent of its unfished biomass in 2009. The OFL of 49 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 47 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 species. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is also equal to the ACL at 47 mt. Cabezon in waters off Oregon were removed from the "other fish" complex in 2011.

h/ Cabezon (California). A cabezon stock assessment was prepared in 2009. The cabezon biomass in waters off California was estimated to be at 48 percent of its unfished biomass in 2009. The OFL of 165 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 158 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. There are no deductions from the ACL so the fishery HG is also equal to the ACL at 158 mt.

i/ California scorpionfish was assessed in 2005 and was estimated to be at 80 percent of its unfished biomass in 2005. The OFL of 122 mt is based on the 2005 assessment with a harvest rate proxy of $F_{50\%}$. The ABC of 117 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{40\%}$, the ACL is set equal to the ABC. 2 mt is deducted from the ACL for the incidental open access fishery, resulting in a fishery HG of 115 mt.

j/ Canary rockfish. A canary rockfish stock assessment update was prepared in 2011 and the stock was estimated to be at 24 percent of its unfished biomass coastwide in 2011. The coastwide OFL of 741 mt is based on the new assessment with a F_{MSY} proxy of $F_{50\%}$. The ABC of 709 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 119 mt is based on a rebuilding plan with a target year to rebuild of 2030 and a SPR harvest rate of 88.7 percent. 17.5 mt is deducted from the ACL for the Tribal fishery (9.5 mt), the incidental open access fishery (2 mt), EFP catch (1.5 mt) and research catch (4.5 mt) resulting in a fishery HG of 101.5 mt. Recreational HGs are being specified: Washington, 3.2; Oregon 11.1 mt; and California 23 mt.

k/ Chilipepper. The coastwide chilipepper stock was assessed in 2007 and estimated to be at 70 percent of its unfished biomass coastwide in 2006. Chilipepper are managed with stock-specific harvest specifications south of 40°10 N. lat. and within the minor shelf rockfish complex north of 40°10' N. lat. Projected OFLs are stratified north and south of 40°10' N. latitude based on the average 1998-2008 assessed area catch, which is 93 percent for the area south of 40°10' N. latitude and 7 percent for the area north of 40°10' N. latitude. South of 40°10' N. lat., the OFL of 1,722 mt is based on the 2007 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,647 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL was set equal to the ABC. 224 mt is deducted from the ACL for the incidental open access fishery (5 mt), EFP fishing (210 mt), and research catch (9 mt), resulting in a fishery HG of 1,423 mt.

l/ Cowcod. A stock assessment update prepared in 2009 estimated the stock to be 5 percent of its unfished biomass in 2009. The OFLs for the Monterey and Conception areas were summed to derive the south of 40°10 N. lat. OFL of 12 mt. The ABC for the area south of 40°10' N. lat. is 9 mt. The assessed portion of the stock in the Conception Area was considered category 2, with a Conception Area contribution to the ABC of 5 mt, which is a 17 percent reduction from the OFL (σ=0.72/P*=0.40). The unassessed portion of the stock in the Monterey area was considered a category 3 stock, with a contribution to the ABC of 3 mt, which is a 31 percent reduction from the OFL (σ=1.44/P*=0.40). A single ACL of 3 mt is being set for both areas combined. The ACL of 3 mt is based on a rebuilding plan with a target year to rebuild of 2068 and an SPR rate of 82.7 percent. 0.1 mt is deducted from the ACL for the amount anticipated to be taken during research activity (0.1 mt), resulting in a fishery HG of 2.9 mt.

m/ Darkblotched rockfish. A stock assessment update was prepared in 2011, and the stock was estimated to be at 30.2 percent of its unfished biomass in 2011. The OFL is projected to be 553 mt and is based on the 2011 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 529 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 330 mt is based on a rebuilding plan with a target year to rebuild of 2025 and an SPR harvest rate of 64.9 percent. 20.8 mt is deducted from the ACL for the Tribal fishery (0.1 mt), the incidental open access fishery (18.4 mt), EFP catch (0.2 mt) and research catch (2.1 mt), resulting in a fishery HG of 309.2 mt.

n/ Dover sole. A 2011 Dover sole assessment estimated the stock to be at 83.7 percent of its unfished biomass in 2011. The OFL of 77,774 mt is based on the results of the 2011 stock assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 74,352 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{25\%}$ coastwide, the ACL could be set equal to the ABC. However, the ACL of 25,000 mt is set at a level below the ABC and higher than the maximum historical landed catch. 1,590 mt is deducted from the ACL for the Tribal fishery (1,497 mt), the incidental open access fishery (55 mt) and research catch (38 mt), resulting in a fishery HG of 23,410 mt.

o/ English sole. A stock assessment update was prepared in 2007. The stock was estimated to be at 116 percent of its unfished biomass in 2007. The OFL of 5,906 mt is based on the results of the 2007 assessment update with an F_{MSY} proxy of $F_{30\%}$. The ABC of 5,646 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. 103 mt is deducted from the ACL for the Tribal fishery (91 mt), the incidental open access fishery (7 mt) and research catch (5 mt), resulting in a fishery HG of 5,543 mt.

p/ Lingcod north. A lingcod stock assessment was prepared in 2009. The lingcod biomass off Washington and Oregon was estimated to be at 62 percent of its unfished biomass in 2009. The OFL of 3,162 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,878 mt was based on a 4 percent reduction from the OFL (σ=0.36/P*=0.45) for the area north of 42° N. lat. as it's a category 1 stock, and 17 percent reduction from the OFL (σ=0.72/P*=0.40) for the area between 42° N. lat. and 40°10'N. lat. as it's a category 2 stock. The ACL was set equal to the ABC. 277.7 mt is deducted from the ACL for the Tribal fishery (250 mt), the incidental open access fishery (16 mt) and research catch (11.67 mt), resulting in a fishery HG of 2,600 mt.

q/ Lingcod south . A lingcod stock assessment was prepared in 2009. The lingcod biomass off California was estimated to be at 74 percent of its unfished biomass in 2009. The OFL of 1,276 mt was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 1,063 mt was based on a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The ACL was set equal to the ABC. 9 mt is deducted from the ACL for the incidental open access fishery (7 mt) and EFP fishing (2 mt), resulting in a fishery HG of 1,054 mt.

r/ Longnose skate. A stock assessment was prepared in 2007 and the stock was estimated to be at 66 percent of its unfished biomass. The OFL of 2,816 mt is based on the 2007 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 2,692 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 2,000 mt is a fixed harvest level that provides greater access to the stock. 72.18 mt is deducted from the ACL for the Tribal fishery (56 mt), incidental open access fishery (3 mt), and research catch (13.18 mt), resulting in a fishery HG of 1,928 mt.

s/ Longspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. A coastwide OFL of 3,304 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC of 2,752 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. For the portion of the stock that is north of 34°27' N. lat., the ACL is 1,958 mt, and is 79 percent of the coastwide OFL for the biomass found in that area reduced by an additional 25 percent as a precautionary adjustment. 46 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (3 mt), and research catch (13 mt) resulting in a fishery HG of 1,912 mt. For that portion of the stock south of 34°27' N. lat. the ACL is 347 mt and is 21 percent of the coastwide OFL reduced by 50 percent as a precautionary adjustment. 3 mt is deducted from the ACL for the incidental open access fishery (2 mt), and research catch (1 mt) resulting in a fishery HG of 344 mt.

t/ Minor nearshore rockfish north. The OFL of 110 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (blue rockfish in California) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 94 mt is the summed contribution of the ABCs for the component species. The ACL is set equal to the complex ABC. No deductions are made to the ACL, thus the fishery HG is equal to the ACL, which is 94 mt.

u/ Minor shelf rockfish north. The OFL of 2,195 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the minor rockfish complexes are based on a sigma value of 0.72 for category 2 stocks (greenspotted rockfish between 40°10' and 42° N. lat. and greenstriped rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,932 mt is the summed contribution of the ABCs for the component species. The ACL of 968 mt is the same as the 2012 ACL. 65.24 mt is deducted from the ACL for the Tribal fishery (30 mt), the incidental open access fishery (26 mt), EFP catch (3 mt) and research catch (6.24 mt) resulting in a fishery HG of 902.8 mt.

v/ Minor slope rockfish north. The OFL of 1,553 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the northern minor slope rockfish complex is based on a sigma value of 0.36 for category 1 stocks (splitnose rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,414 mt is the summed contribution of the ABCs for the component species. The ACL of 1,160 mt is the same as the 2012 ACL. 62 mt is deducted from the ACL for the Tribal fishery (36 mt), the incidental open access fishery (19 mt), EFP catch (1 mt) and research catch (6 mt), resulting in a fishery HG of 1,098 mt.

w/ Minor nearshore rockfish south. The OFL of 1,160 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern minor nearshore rockfish complex is based on a sigma value of 0.36 for category 1 stocks (gopher rockfish north of 34°27' N. lat.), 0.72 for category 2 stocks (blue rockfish north of 34°27' N. lat.) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting minor nearshore

rockfish south ABC, which is the summed contribution of the ABCs for the component species within the complex, is 1,001 mt. The ACL is the same as the 2012 ACL. There are no deductions from the ACL, resulting in a fishery HG of 990 mt. Blue rockfish south of 42° N. latitude has a species-specific HG of 236 mt.

x/ Minor shelf rockfish south. The OFL of 1,913 mt is the sum of the OFL contributions for the component species within the complex. The ABCs for the southern minor shelf rockfish complex is based on a sigma value of 0.72 for category 2 stocks (greenspotted and greenstriped rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 1,620 mt is the summed contribution of the ABCs for the component species. The ACL of 714 mt is the same as the 2012 ACL. 46 mt is deducted from the ACL for the incidental open access fishery (9 mt), EFP catch (31 mt) and research catch (6 mt), resulting in a shelf fishery HG of 668 mt.

y/ Minor slope rockfish south. The OFL of 685 mt is the sum of the OFL contributions for the component species within the complex. The ABC for the southern minor slope rockfish complex is based on a sigma value of 0.72 for category 2 stocks (bank and blackgill rockfish) and 1.44 for category 3 stocks (all others) with a P* of 0.45. The resulting ABC of 622 mt is the summed contribution of the ABCs for the component species. The ACL is equal to the ABC. 21 mt is deducted from the ACL for the incidental open access fishery (17 mt), EFP catch (2 mt) and research catch (2 mt), resulting in a slope fishery HG of 601 mt. Blackgill rockfish has species-specific HGs: 27 mt for the limited entry fixed gear fishery; 18 mt for the open access fishery.

z/ "Other fish" is composed entirely of groundfish FMP species that are neither rockfish (family Scorpaenidae) nor flatfish, and most of these species are unassessed, with the exception of spiny dogfish, was assessed in 2011 and is a category 2 stock. The OFL of 6,802 mt is the sum of the OFL contributions for the component species within the complex. The OFL contribution for spiny dogfish is projected from the 2011 assessment using an $F_{45\%}$ F_{MSY} proxy harvest rate. The ABC of 4,697 mt is calculated by applying a P* of 0.40 and a sigma of 1.44 to the OFLs calculated for the category 3 stocks (i.e., all stocks other than spiny dogfish) and a P* of 0.30 and a sigma of 0.72 to the OFL calculated for spiny dogfish. The resulting ABC for the complex is the summed contribution of the ABCs calculated for the component stocks. The ACL is set equal to the ABC. 177 mt is deducted from the ACL for the Tribal fishery (112 mt), the incidental open access fishery (50 mt), EFP catch (3 mt) and research catch (12 mt), resulting in an "other fish" fishery HG of 4,520 mt.

aa/ "Other flatfish" are the unassessed flatfish species that do not have individual OFLs/ABCs/ACLs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. The other flatfish OFL of 10,060 mt is based on the sum of the OFL contributions of the component stocks. The ABC of 6,982 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as the complex is composed of category 3 stocks. The ACL of 4,884 mt is the 2011 and 2012 ACL carried forward as there have been no significant changes in the status or management of stocks within the complex. 202 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (125 mt), and research catch (17 mt), resulting in a fishery HG of 4,682 mt.

bb/ Pacific cod. The 3,200 mt OFL is based on the maximum level of historic landings. The ABC of 2,221 mt is a 31 percent reduction from the OFL (σ=1.44/P*=0.40) as it's a category 3 stock. The 1,600 mt ACL is the OFL reduced by 50 percent as a precautionary adjustment. 409.04 mt is deducted from the ACL for the Tribal fishery (400 mt), research fishing (7.04 mt), and the incidental open access fishery (2.0 mt), resulting in a fishery HG of 1,191 mt.

cc/ Pacific Ocean Perch. A POP stock assessment was prepared in 2011 and the stock was estimated to be at 19.1 percent of its unfished biomass in 2011. The OFL of 838 mt for the area north of 40°10 N. lat. is based on the 2011 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 801 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL of 153 mt is based on a rebuilding plan with a target year to rebuild of 2051 and an SPR harvest rate of 86.4 percent. 16.5 mt is deducted from the ACL for the Tribal fishery (10.9 mt), open access fishery (0.4 mt) and research catch (5.2 mt), resulting in a fishery HG of 136.5 mt.

dd/ Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2014 meeting.

ee/ Petrale sole. A petrale sole stock assessment was prepared for 2011. In 2011 the petrale sole stock was estimated to be at 18 percent of its unfished biomass. The OFL of 2,774 mt is based on the 2011 assessment with an $F_{30\%}$ F_{MSY} proxy. The ABC of 2,652 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL is set equal to the ABC. 234 mt is deducted from the ACL for the Tribal fishery (220 mt), the incidental open access fishery (2.4 mt), and research catch (11.6 mt), resulting in a fishery HG of 2,418 mt.

ff/ Sablefish north. A coastwide sablefish stock assessment was prepared in 2011. The coastwide sablefish biomass was estimated to be at 33 percent of its unfished biomass in 2011. The coastwide OFL of 7,158 mt is based on the 2011 stock assessment with an F_{MSY} proxy of $F_{45\%}$. The ABC of 6,535 mt is an 8.7 percent reduction from the OFL (σ=0.36/P*=0.40). The 40-10 harvest policy was applied to the ABC to derive a coastwide ACL value. Then the ACL value was apportioned north and south of 36° N. lat., using the average of annual swept area biomass (2003-2010) from the NMFS NWFSC trawl survey, with 73.6 percent going to the area north of 36° N. lat. and 26.4 percent going to the area south of 36° N. lat. The northern ACL is 4,349 mt and is reduced by 435 mt for the tribal allocation (10 percent of the ACL north of 36° N. lat.). The 435 mt Tribal allocation is reduced by 1.5 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

gg/ Sablefish south. The ACL for the area south of 36° N. lat. is 1,560 mt (26.4 percent of the calculated coastwide ACL value). 5 mt is deducted from the ACL for the incidental open access fishery (2 mt) and research catch (3 mt), resulting in a fishery HG of 1,555 mt.

hh/ Shortbelly rockfish. A non quantitative assessment was conducted in 2007. The spawning stock biomass of shortbelly rockfish was estimated at 67 percent of its unfished biomass in 2005. The OFL of 6,950 mt was recommended for the stock in 2014 with an ABC of 5,789 mt (σ=0.72 with a P* of 0.40). The 50 mt ACL is slightly higher than recent landings and is in recognition of the stock's importance as a forage species in the California Current ecosystem. 2 mt is deducted from the ACL for research catch, resulting in a fishery HG of 48 mt.

ii/ Shortspine thornyhead. A coastwide stock assessment was conducted in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. A coastwide OFL of 2,310 mt is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The coastwide ABC of 2,208 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. For the portion of the stock that is north of 34°27' N. lat., the ACL is 1,525 mt. The northern ACL is 66 percent of the coastwide OFL for the portion of the biomass found north of 34°27' N. lat. 59.22 mt is deducted from the ACL for the Tribal fishery (50 mt), the incidental open access fishery (2 mt), and research catch (7.22mt) resulting in a fishery HG of 1,466 mt for the area north of 34°27' N. lat. For that portion of the stock south of 34°27' N. lat. the ACL is 393 mt which is 34 percent of the coastwide OFL for the portion of the biomass found south of 34°27' N. lat. reduced by 50 percent as a precautionary adjustment. 42 mt is deducted from the ACL for the incidental open access fishery (41 mt), and research catch (1 mt) resulting in a fishery HG of 351 mt for the area south of 34°27' N. lat.

jj/ Splitnose rockfish. A coastwide assessment was prepared in 2009 that estimated the stock to be at 66 percent of its unfished biomass in 2009. Splitnose in the north is managed under the minor slope rockfish complex and with species-specific harvest specifications south of 40°10' N. lat. The OFLs were apportioned north and south based on the average 1916-2008 assessed area catch resulting in 64.2 percent stock-specific OFL south of 40°10' N. lat, and 35.8 percent for the contribution of splitnose rockfish to the northern minor slope rockfish complex. South of 40°10' N. lat. the OFL of 1,747 mt is based on the 2009 assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 1,670 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. Because the unfished biomass is estimated to be above 40 percent of the unfished biomass, the ACL is set equal to the ABC. 12 mt is deducted from the ACL for research catch (9 mt) and EFP catch (3 mt), resulting in a fishery HG of 1,658 mt.

kk/ Starry Flounder. The stock was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. For 2013, the coastwide OFL of 1,834 mt is based on the 2005 assessment with an F_{MSY} proxy of $F_{30\%}$. The ABC of 1,528 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. Because the stock is above $B_{25\%}$, the ACL was set equal to the ABC. 7 mt is deducted from the ACL for the Tribal fishery (2 mt), and the incidental open access fishery (5 mt), resulting in a fishery HG of 1,521 mt.

ll/ Widow rockfish. The stock was assessed in 2011 and was estimated to be at 51.1 percent of its unfished biomass in 2011. The OFL of 4,435 mt is based on the 2011 stock assessment with an $F_{50\%}$ F_{MSY} proxy. The ABC of 4,212 mt is a 5 percent reduction from the OFL (σ=0.41/P*=0.45). A unique sigma of 0.41 was calculated for widow rockfish since the estimated variance in estimated biomass was greater than the 0.36 used as a proxy for other category 1 stocks. A constant catch strategy will be used with an ACL of 1,500 mt. 89.2 mt is deducted from the ACL for the Tribal fishery (60 mt), the incidental open access fishery (89.2 mt), EFP catch (18 mt) and research catch (7.9 mt), resulting in a fishery HG of 1,411 mt.

mm/ Yelloweye rockfish. A stock assessment update was prepared in 2011. The stock was estimated to be at 21.3 percent of its unfished biomass in 2011. The 51 mt coastwide OFL was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F_{50\%}$. The ABC of 43 mt is a 17 percent reduction from the OFL (σ=0.72/P*=0.40) as it's a category 2 stock. The 18 mt ACL is based on a rebuilding plan with a target year to rebuild of 2074 and an SPR harvest rate of 76.0 percent. 5.82 mt is deducted from the ACL for the Tribal fishery (2.3 mt), the incidental open access fishery (0.2 mt), EFP catch (0.02 mt) and research catch (3.3 mt) resulting in a fishery HG of 12.2 mt. Recreational HGs are being established: Washington, 2.9; Oregon, 2.6 mt; and California, 3.4 mt.

nn/ Yellowtail rockfish. A yellowtail rockfish stock assessment update was last prepared in 2005 for the area north of 40°10' N. latitude to the U.S-Canadian border. Yellowtail rockfish was estimated to be at 55 percent of its unfished biomass in 2005. The OFL of 4,584 mt is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The ABC of 4,382 mt is a 4 percent reduction from the OFL (σ=0.36/P*=0.45) as it's a category 1 stock. The ACL was set equal to the ABC, because the stock is above $B_{40\%}$. 701.49 mt is deducted from the ACL for the Tribal fishery (677 mt), the incidental open access fishery (3 mt), EFP catch (10 mt) and research catch (11.49 mt), resulting in a fishery HG of 3,681mt.

Table 2b. To Part 660, Subpart C - 2014, and Beyond, Allocations by Species or Species Group. (Weights in Metric Tons)

Species		Allocations			
		Trawl		Non-trawl	
	Fishery HG	%	Mt	%	Mt
Arrowtooth flounder	3,671	95%	3,487	5%	184
Bocaccio - S of 40°10' N. lat. a/	328.6	NA	79.0	NA	249.6
Canary rockfish a/ b/	101.5	NA	54.1	NA	47.4
Chilipepper - S of 40°10 N. Lat.	1,423	75%	1,067	25%	356
Cowcod - S of 40°10' N. lat. a/	2.9	NA	1.0	NA	1.9
Darkblotched rockfish c/	309.2	95%	293.7	5%	15.5
Dover sole	23,410	95%	22,240	5%	1,171
English sole	5,543	95%	5,266	5%	277
Lingcod					
N of 40°10' N. lat.	2,600	45%	1,170	55%	1,430
S of 40°10' N. lat.	1,054	45%	474	55%	580
Longnose skate a/	1,928	90%	1,735	10%	193
Longspine thornyhead					
N of 34°27' N. lat.	1,912	95%	1,816	5%	96
Minor shelf rockfish north a/	903	60.2%	543	39.8%	359
Minor slope rockfish north	1,098	81%	889	19%	209
Minor shelf rockfish south a/	668	12.2%	81	87.8%	587
Minor slope rockfish south	601	63%	379	37%	222
Other flatfish	4,682	90%	4,214	10%	468
Pacific cod	1,191	95%	1,131	5%	60
POP - N of 40°10' N. lat. d/	136.5	95%	129.7	5%	6.8
Pacific whiting	TBA	100%	TBA	0%	TBA
Petrale sole a/	2,418.0	NA	2383.0	NA	35.0
Sablefish					
N of 36° N. lat.	See Table 1c of this subpart				
S of 36° N. lat.	1,555.0	42%	653	58%	902
Shortspine thornyhead					
N of 34°27' N. lat.	1,466	95%	1,393	5%	73
S of 34°27' N. lat.	351	NA	50	NA	301
Splitnose - S of 40°10 N. Lat.	1,658	95%	1,575	5%	83
Starry Flounder	1,521	50%	761	50%	761
Widow e/	1,411	91%	1,284	9%	127
Yelloweye rockfish a/	12.2	NA	1.0	NA	11.2
Yellowtail - N of 40°10 N. Lat.	3,681	88%	3,239	12%	442

a/ Allocations decided through the biennial specification process.

b/ 13 mt of the total trawl allocation of canary rockfish is allocated to the at-sea whiting fisheries, as follows: 5.4 mt for the mothership fishery, and 7.6 mt for the catcher/processor fishery.

c/ 9 percent (26.4 mt) of the total trawl allocation for darkblotched rockfish is allocated to the whiting fisheries, as follows: 11.1 mt for the shorebased IFQ fishery, 6.3 mt for the mothership fishery, and 9.0 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

d/ 30 mt of the total trawl allocation for POP is allocated to the whiting fisheries, as follows: 12.6 mt for the shorebased IFQ fishery, 7.2 mt for the mothership fishery, and 10.2 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

e/ 500 mt of the total trawl allocation for widow rockfish is allocated to the whiting fisheries, as follows: 210 mt for the shorebased IFQ fishery, 120 mt for the mothership fishery, and 170 mt for the catcher/processor fishery. The tonnage calculated here for the whiting portion of the shorebased IFQ fishery contributes to the total shorebased trawl allocation, which is found at 660.140(d)(1)(ii)(D).

Table 2c. To Part 660, Subpart C - Sablefish North of 36° N. lat. Allocations, 2014 and Beyond

Year	ACL	Set-asides		Recreational Estimate	EFP	Commercial HG	Limited Entry HG		Open Access HG	
		Tribal	Research				%	Mt	%	MT b/
2014	4,349	435	26	6.1	4	3,878	90.6%	3,513	9.4%	365

Year	LE All	Limited Entry Trawl c/			Limited Entry Fixed Gear d/		
		ALL Trawl	At-sea Whiting	Shorebased IFQ	ALL FG	Primary	DTL
2014	3,513	2,038	50	1,988	1,476	1,254	221

a/ The tribal allocation is further reduced by 1.5 percent for discard mortality resulting in 428 mt in 2014.

b/ Of the Open access HG the annual amount estimated to be taken in the incidental OA fishery is 35 mt.

c/ The trawl allocation is 58% of the limited entry HG

d/ The limited entry fixed gear allocation is 42% of the limited entry HG

Table 2d. To Part 660, Subpart C - At-Sea Whiting Fishery Annual Set-Asides, 2014 and Beyond

Species or Species Complex	Area	Set Aside (mt)
Arrowtooth Flounder	Coastwide	20
BOCACCIO	S. of 40°10 N. lat.	NA
CANARY ROCKFISH a/	Coastwide	Allocation
Chilipepper	S. of 40°10 N. lat.	NA
COWCOD	S. of 40°10 N. lat.	NA
DARKBLOTCHED a/	Coastwide	Allocation
Dover Sole	Coastwide	5
English Sole	Coastwide	5
Lingcod	N. of 40°10 N. lat.	15
Lingcod	S. of 40°10 N. lat.	NA
Longnose Skate	Coastwide	5
Longspine Thornyhead	N. of 34°27 N. lat.	5
Longspine Thornyhead	S. of 34°27 N. lat.	NA
Minor Nearshore Rockfish	N. of 40°10 N. lat.	NA
Minor Nearshore Rockfish	S. of 40°10 N. lat.	NA
Minor Shelf Rockfish	N. of 40°10 N. lat.	35
Minor Shelf Rockfish	S. of 40°10 N. lat.	NA
Minor Slope Rockfish	N. of 40°10 N. lat.	100
Minor Slope Rockfish	S. of 40°10 N. lat.	NA
Other Fish	Coastwide	520
Other Flatfish	Coastwide	20
Pacific Cod	Coastwide	5
Pacific Halibut b/	Coastwide	10
PACIFIC OCEAN PERCH a/	N. of 40°10 N. lat.	Allocation
Pacific Whiting	Coastwide	Allocation
Petrale Sole	Coastwide	5
Sablefish	N. of 36° N. lat.	50
Sablefish	S. of 36° N. lat.	NA
Shortspine Thornyhead	N. of 34°27 N. lat.	20
Shortspine Thornyhead	S. of 34°27 N. lat.	NA
Starry Flounder	Coastwide	5
Widow Rockfish a/	Coastwide	Allocation
YELLOWEYE	Coastwide	0
Yellowtail	N. of 40°10 N. lat.	300

a/ See Table 1.b., to Subpart C, for the at-sea whiting allocations for these species.
b/ As stated in §660.55 (m), the Pacific halibut set-aside is 10 mt, to accommodate bycatch in the at-sea Pacific whiting fisheries and in the shorebased trawl sector south of 40°10 N. lat. (estimated to 5 mt each).

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12. In § 660.112, introductory text and paragraph (b)(1)(xv) is revised to read as follows:

§ 660.112 Trawl fishery—prohibitions.

These prohibitions are specific to the limited entry trawl fisheries. General groundfish prohibitions are defined at § 660.12. In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person or vessel to:

* * * * *

(b) * * *

(1) * * *

(xv) Begin a new fishing trip until all fish from an IFQ landing have been offloaded from the vessel, consistent with § 660.12(a)(11).

* * * * *

13. In § 660.130, paragraphs (d) introductory text, (d)(1)(iii), and (e) introductory text are revised to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) *Sorting.* In addition to the requirements at § 660.12(a)(8), the States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt. Sector-specific sorting requirements and exceptions are listed at paragraphs (d)(2) and (d)(3) of this section.

(1) * * *

* * * * *

(iii) *South of 40°10′ N. lat.* Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper, bocaccio, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish, blackgill rockfish and cabezon.

* * * * *

(e) *Groundfish conservation areas (GCAs) applicable to trawl vessels.* A GCA, a type of closed area, is a geographic area defined by coordinates expressed in degrees of latitude and longitude. The latitude and longitude coordinates of the GCA boundaries are specified at §§ 660.70 through 660.74. A vessel that is fishing within a GCA listed in this paragraph (e) with trawl gear authorized for use within a GCA may not have any other type of trawl gear on board the vessel. The following GCAs apply to vessels participating in the limited entry trawl fishery. Additional closed areas that specifically apply to the Pacific whiting fisheries are described at § 660.131(c).

* * * * *

14. In § 660.140, paragraphs (c)(1) table, (d)(1)(ii) introductory text, (d)(1)(ii)(D), (d)(3)(ii)(B)(*3*), (d)(4)(i)(C), (e)(4)(i), (e)(5) introductory text, and (e)(5)(i) are revised and paragraphs (d)(1)(ii)(A)(*3*), (d)(1)(ii)(B)(*3*) and (d)(1)(ii)(B)(*4*) are added to read as follows:

§ 660.140 Shorebased IFQ Program

* * * * *

(c) * * *

(1) * * *

IFQ SPECIES

ROUNDFISH:
Lingcod N. of 40°10′ N. lat
Lingcod S. of 40°10′ N. lat
Pacific cod
Pacific whiting
Sablefish N. of 36° N. lat
Sablefish S. of 36° N. lat
FLATFISH:
Arrowtooth flounder
Dover sole
English sole
Other flatfish stock complex
Petrale sole
Starry flounder
Pacific halibut (IBQ) N. of 40°10′ N. lat
ROCKFISH:
Bocaccio S. of 40°10′ N. lat
Canary rockfish
Chilipepper S. of 40°10′ N. lat
Cowcod S. of 40°10′ N. lat
Darkblotched rockfish
Longspine thornyhead N. of 34°27′ N. lat
Minor shelf rockfish complex N. of 40°10′ N. lat
Minor shelf rockfish complex S. of 40°10′ N. lat
Minor slope rockfish complex N. of 40°10′ N. lat
Minor slope rockfish complex S. of 40°10′ N. lat
Pacific ocean perch N. of 40°10′ N. lat
Shortspine thornyhead N. of 34°27′ N. lat
Shortspine thornyhead S. of 34°27′ N. lat
Splitnose rockfish S. of 40°10′ N. lat
Widow rockfish
Yelloweye rockfish
Yellowtail rockfish N. of 40°10′ N. lat

* * * * *

(d) * * *

(1) * * *

(ii) *Annual QP and IBQ pound allocations.* QP and IBQ pounds will be deposited into QS accounts annually. QS permit owners will be notified of QP deposits via the IFQ Web site and their QS account. QP and IBQ pounds will be issued to the nearest whole pound using standard rounding rules (i.e., decimal amounts less than 0.5 round down and 0.5 and greater round up), except that in the first year of the Shorebased IFQ Program, issuance of QP for overfished species greater than zero but less than one pound will be rounded up to one pound. Rounding rules may affect distribution of the entire shorebased trawl allocation. NMFS will distribute such allocations to the maximum extent practicable, not to exceed the total allocation. QS permit owners must transfer their QP and IBQ pounds from their QS account to a vessel account in order for those QP and IBQ pounds to be fished. QP and IBQ pounds must be transferred in whole pounds (i.e., no fraction of a QP or IBQ pound can be transferred). All QP and IBQ pounds in a QS account must be transferred to a vessel account by September 1 of each year in order to be fished, unless there is a reapportionment of Pacific whiting consistent with § 660.131(h) and paragraph (d)(3) of this section or a release of additional QP consistent with § 660.60(c) and paragraph (d)(3)(ii)(B)(3) of this section.

(A) * * *

(3) In years where the non-tribal deductions from the TAC, ACL, or ACT when specified, described at § 660.55(b), were too high and would go unharvested, NMFS may increase the shorebased trawl allocation, consistent with § 660.60(c), and issue additional QP to QS accounts.

(B) * * *

(3) In years where the non-tribal deductions from the TAC, ACL, or ACT when specified, described at § 660.55(b), were too high and would go unharvested, NMFS may increase the shorebased trawl allocation, consistent with § 660.60(c), and issue additional QP to QS accounts.

(4) In years where there is reapportionment of Pacific whiting, specified at § 660.131(h), to the Shorebased IFQ Program, NMFS will increase the shorebased trawl allocation and issue additional QP to QS accounts as described at paragraph (d)(3)(ii)(B)(3) of this section.

* * * * *

(D) For the trawl fishery, NMFS will issue QP based on the following shorebased trawl allocations:

SHOREBASED TRAWL ALLOCATIONS

IFQ species	Management area	2013 shorebased trawl allocation (mt)	2014 shorebased trawl allocation (mt)
Arrowtooth flounder		3,846.13	3,467.08
Bocaccio	South of 40°10′ N. lat	74.90	79.00
Canary Rockfish		39.90	41.10
Chilipepper	South of 40°10′ N. lat	1,099.50	1,067.25
Cowcod	South of 40°10′ N. lat	1.00	1.00
Darkblotched Rockfish		266.70	278.41
Dover sole		22,234.50	22,234.50
English sole		6,365.03	5,255.59
Lingcod	North of 40°10′ N. lat	1,222.57	1,151.68
Lingcod	South of 40°10′ N. lat	494.41	472.88
Longspine thornyhead	North of 34°27′ N. lat	1,859.85	1,811.40
Minor shelf rockfish complex	North of 40°10′ N. lat	508.00	508.00
Minor shelf rockfish complex	South of 40°10′ N. lat	81.00	81.00
Minor slope rockfish complex	North of 40°10′ N. lat	776.93	776.93
Minor slope rockfish complex	South of 40°10′ N. lat	376.11	378.63
Other flatfish complex		4,189.61	4,189.61
Pacific cod		1,125.29	1,125.29
Pacific Ocean Perch	North of 40°10′ N. lat	109.43	112.28
Pacific Whiting			
Petrale Sole		2,318.00	2,378.00
Sablefish	North of 36° N. lat	1,828.00	1,988.00
Sablefish	South of 36° N. lat	602.28	653.10
Shortspine thornyhead	North of 34°27′ N. lat	1,385.35	1,371.12
Shortspine thornyhead	South of 34°27′ N. lat	50.00	50.00
Splitnose rockfish	South of 40°10′ N. lat	1,518.10	1,575.10
Starry flounder		751.50	755.50
Widow rockfish		993.83	993.83
Yelloweye Rockfish		1.00	1.00
Yellowtail rockfish	North of 40°10′ N. lat	2,635.33	2,638.85

* * * * *

(3) * * *

(ii) * * *

(B) * * *

(*3*) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (i.e. no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account to a vessel account are subject to vessel accumulation limits and NMFS' approval. Once QP or IBQ pounds are transferred from a QS account to a vessel account (accepted by the transferee/vessel owner), they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. If, after September 1 in any year, the Regional Administrator makes a decision to reapportion Pacific whiting from the tribal to the non-tribal fishery or NMFS releases additional QP consistent with §§ 660.60(c) and paragraph (d)(1)(ii) of this section, the following actions will be taken.

(*i*) NMFS will credit QS accounts with additional QP proportionally, based on the QS percent for a particular QS permit owner and the increase in the shorebased trawl allocation specified at paragraph (d)(1)(ii)(D) of this section.

(*ii*) The QS account transfer function will be reactivated by NMFS from the date that QS accounts are credited with additional QP to allow permit holders to transfer QP to vessel accounts only for those IFQ species with additional QP.

(*iii*) After December 15, the transfer function in QS accounts will again be inactivated.

* * * * *

(4) * * *

(i) * * *

(C) The Shorebased IFQ Program accumulation limits are as follows:

ACCUMULATION LIMITS

Species category	QS and IBQ control limit (in percent)
Arrowtooth flounder	10
Bocaccio S. of 40°10′ N. lat	13.2
Canary rockfish	4.4
Chilipepper S. of 40°10′ N. lat	10
Cowcod S. of 40°10′ N. lat	17.7
Darkblotched rockfish	4.5
Dover sole	2.6
English sole	5

ACCUMULATION LIMITS—Continued

Species category	QS and IBQ control limit (in percent)
Lingcod:	
N. of 40°10′ N. lat	2.5
S. of 40°10′ N. lat	2.5
Longspine thornyhead:	
N. of 34°27′ N. lat	6
Minor rockfish complex N. of 40°10′ N. lat:	
Shelf species	5
Slope species	5
Minor rockfish complex S. of 40°10′ N. lat:	
Shelf species	9
Slope species	6
Other flatfish stock complex	10
Pacific cod	12
Pacific halibut (IBQ) N. of 40°10′ N. lat	5.4
Pacific ocean perch N. of 40°10′ N. lat	4
Pacific whiting (shoreside)	10
Petrale sole	3
Sablefish:	
N. of 36° N. lat. (Monterey north)	3
S. of 36° N. lat. (Conception area)	10
Shortspine thornyhead:	
N. of 34°27′ N. lat	6
S. of 34°27′ N. lat	6
Splitnose rockfish S. of 40°10′ N. lat	10
Starry flounder	10

ACCUMULATION LIMITS—Continued

Species category	QS and IBQ control limit (in percent)
Widow rockfish	5.1
Yelloweye rockfish	5.7
Yellowtail rockfish N. of 40°10′ N. lat	5
Non-whiting groundfish species	2.7

* * * * *

(e) * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit (Annual Limit) in any year, and, for species covered by Unused QP Vessel Limits (Daily Limit), may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. The QP Vessel Limit (Annual Limit) is calculated as unused available QPs plus used QPs (landings and discards) plus any pending outgoing transfer of QPs. The Unused QP Vessel Limits (Daily Limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs. These vessel limits are as follows:

VESSEL LIMITS

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Arrowtooth flounder	20	
Bocaccio S. of 40°10′ N. lat	15.4	13.2
Canary rockfish	10	4.4
Chilipepper S. of 40°10′ N. lat	15	
Cowcod S. of 40°10′ N. lat	17.7	17.7
Darkblotched rockfish	6.8	4.5
Dover sole	3.9	
English sole	7.5	
Lingcod		
N. of 40°10′ N. lat	5.3	
S. of 40°10′ N. lat	13.3	
Longspine thornyhead:		
N. of 34°27′ N. lat	9	
Minor rockfish complex N. of 40°10′ N. lat:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10′ N. lat:		
Shelf species	13.5	
Slope species	9	
Other flatfish complex	15	
Pacific cod	20	
Pacific halibut (IBQ) N. of 40°10′ N. lat	14.4	5.4
Pacific ocean perch N. of 40°10′ N. lat	6	4
Pacific whiting (shoreside)	15	
Petrale sole	4.5	
Sablefish:		
N. of 36° N. lat. (Monterey north)	4.5	
S. of 36° N. lat. (Conception area)	15	
Shortspine thornyhead:		
N. of 34°27′ N. lat	9	
S. of 34°27′ N. lat	9	
Splitnose rockfish S. of 40°10′ N. lat	15	
Starry flounder	20	
Widow rockfish	8.5	5.1
Yelloweye rockfish	11.4	5.7
Yellowtail rockfish N. of 40°10′ N. lat	7.5	
Non-whiting groundfish species	3.2	

* * * * *

(5) *Carryover.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year to the next or allows a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit is calculated by multiplying the carryover percentage by the cumulative total of QP or IBQ pounds (used and unused) in a vessel account for the base year, less any transfers out of the vessel account, any QP resulting from reapportionment of whiting specified at § 660.60(d) or release of additional QP during the year specified at § 660.60(c)(3)(ii), or any previous carryover amounts. The percentage used for the carryover provision may be changed during the biennial specifications and management measures process, and, for the surplus carryover provision specified in paragraph (e)(5)(i) of this section, the percentage is designated as a ''routine management measure'' at § 660.60(c)(1)(v) and may be changed through an inseason action, but may not exceed 10 percent.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carry over limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover

amounts) in the vessel account at the end of the year. Based on a Council recommendation, NMFS will credit the carryover amount to the vessel account in the immediately following year once NMFS has completed its end-of-the-year account reconciliation. If NMFS disagrees with all or part of the Council recommendation, NMFS will not credit the vessel accounts, as appropriate, and will notify the Council in writing, describing the basis for the decision. NMFS will notify vessel account owners through the online IFQ system of any additional QP or IBQ pounds resulting from a carryover of surplus pounds, and will not issue those pounds above the vessel limits (specified at paragraph (e)(4) of this section). If there is a decline in the ACL between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the ACL. When surplus QP or IBQ pounds are issued, those pounds are deposited directly into the vessel accounts and do not increase the shorebased trawl allocation. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

* * * * *

15. Table 1 (North) and 1 (South) to 660, subpart D are revised as follows:

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Table 1 (North) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting North of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 48°10' N. lat.	shore - modified[2/] 200 fm line[1/]	shore - 200 fm line[1/]	shore - 150 fm line[1/]		shore - 200 fm line[1/]	shore - modified[2/] 200 fm line[1/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[1/] - modified[2/] 200 fm line[1/]	75 fm line[1/] - 150 fm line[1/]	100 fm line[1/] - 150 fm line[1/]			75 fm line[1/] - 150 fm line[1/]
3	45°46' N. lat. - 40°10' N. lat.		75 fm line1/ - 200 fm line1/	100 fm line[1/] - 200 fm line[1/]			75 fm line[1/] - modified[2/] 200 fm line[1/]

Selective flatfish trawl gear is required shoreward of the RCA; all bottom trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**

See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).

State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.

4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month
5	**Whiting**	
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.
8	**Cabezon**	
9	North of 46°16' N. lat.	Unlimited
10	46°16' N. lat. - 40°10' N. lat.	50 lb/ month
11	**Shortbelly**	Unlimited
12	**Spiny dogfish**	60,000 lb/ month
13	**Longnose skate**	Unlimited
14	**Other Fish [3/]**	Unlimited

TABLE 1 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 1 (South) to Part 660, Subpart D -- Limited Entry Trawl Rockfish Conservation Areas and Landing Allowances for non-IFQ Species and Pacific Whiting South of 40°10' N. Lat.

This table describes Rockfish Conservation Areas for vessels using groundfish trawl gear. This table describes incidental landing allowances for vessels registered to a Federal limited entry trawl permit and using groundfish trawl or groundfish non-trawl gears to harvest individual fishing quota (IFQ) species.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	South of 40°10' N. lat.	100 fm line[1/] - 150 fm line [1/ 2/]					
	Small footrope trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, midwater trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope trawl gear and midwater trawl gear are prohibited shoreward of the RCA. **Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry groundfish trawl fishery landing allowances in this table, regardless of the type of fishing gear used. Vessels fishing groundfish trawl quota pounds with groundfish non-trawl gears, under gear switching provisions at § 660.140, are subject to the limited entry fixed gear non-trawl RCA, as described in Tables 1 (North) and 1 (South) to Part 660, Subpart E.**						
	See § 660.60, § 660.130, and § 660.140 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
2	**Longspine thornyhead**						
3	South of 34°27' N. lat.	24,000 lb/ 2 months					
4	**Minor nearshore rockfish & Black rockfish**	300 lb/ month					
5	**Whiting**						
6	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.131 for season and trip limit details. -- After the primary whiting season: CLOSED.					
7	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
8	**Cabezon**	50 lb/ month					
9	**Shortbelly**	Unlimited					
10	**Spiny dogfish**	60,000 lb/ month					
11	**Longnose skate**	Unlimited					
12	**California scorpionfish**	Unlimited					
13	**Other Fish [3/]**	Unlimited					

TABLE 1 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ South of 34°27' N. lat., the RCA is 100 fm line - 150 fm line along the mainland coast; shoreline - 150 fm line around islands.

3/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (excluding longnose skate), ratfish, morids, grenadiers, and kelp greenling.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

16. In § 660.230, paragraphs (c)(1) and (c)(2), and (c)(2)(ii) and (c)(2)(iii) are revised to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(1) In addition to the requirements at § 660.12(a)(8) the States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) For limited entry fixed gear vessels, the following species must be sorted:

* * * * *

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish, cabezon (Oregon and California);

(iii) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper, bocaccio, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish, blackgill rockfish and cabezon.

* * * * *

17. In § 660.231, introductory text and paragraph (b)(3)(i) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

This section applies to the sablefish primary fishery for the limited entry fixed gear fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing outside of the sablefish primary season north of 36° N. lat. is governed by management measures imposed under §§ 660.230, 660.232, 660.330 and 660.332.

* * * * *

(b) * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (i.e., stacked permits). If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2013, the following annual limits are in effect: Tier 1 at 34,513lb (15,665 kg), Tier 2 at 15,688 lb (7,116 kg), and Tier 3 at 8,964 lb (4,066 kg). For 2014 and beyond, the following annual limits are in effect: Tier 1 at 37,441 lb (16,983 kg), Tier 2 at 17,019 lb (7,720 kg), and Tier 3 at 9,725 lb (4,411 kg).

* * * * *

18. In § 660.232, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 660.232 Limited entry daily trip limit (DTL) fishery for sablefish.

(a) * * *

(2) Following the start of the primary season, all landings made by a vessel authorized by § 660.231(a) of this subpart to fish in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. A vessel that is eligible to fish in the sablefish primary season may fish in the DTL fishery for sablefish once that vessels' primary season sablefish limit(s) have been taken, or after the close of the primary season, whichever occurs earlier. A vessel's primary season cumulative limit(s) are considered to be taken when the total amount remaining is less than the daily trip limit for sablefish north of 36° N. lat., if one is specified, in Table 2 (North) and Table 2 (South) to this subpart. If no daily limit is specified, the primary season cumulative limit(s) are considered to be taken when the total amount remaining is less than 300 pounds. Any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry DTL fishery for sablefish for the remainder of the fishing year.

(3) No vessel may land sablefish against both its primary season cumulative sablefish limits and against the DTL fishery limits within the same 24 hour period of 0001 hours local time to 2400 hours local time.

* * * * *

19. Tables 2 (North) and 2 (South) to Part 660, subpart E are revised to read as follows:

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	43°00' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
5	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
6	**Pacific ocean perch**	1,800 lb/ 2 months					
7	**Sablefish**	1,100 lb. per week, not to exceed 4,200 lb/2 months[3/]					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**	2,000 lb/ 2 months					
10	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
11	**Arrowtooth flounder**						
12	**Petrale sole**						
13	**English sole**						
14	**Starry flounder**						
15	**Other flatfish[4/]**						
16	**Whiting**	10,000 lb/ trip					
17	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Minor nearshore rockfish & Black rockfish**						
21	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]					
22	42° - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish					
23	**Lingcod[6/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Longnose skate**	Unlimited					
27	**Other fish[7/]**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December: 1,100 lb per week, not to exceed 4,400 lb/2 months.

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish					
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' - 36° N. lat.	1,100 lb per week, not to exceed 4,200 lb/2 months[3/]					
7	South of 36° N. lat.	1,880 lb/ week[4/]					
8	**Longspine thornyhead**	10,000 lb / 2 months					
9	**Shortspine thornyhead**						
10	40°10' - 34°27' N. lat.	2,000 lb/ 2 months					
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[5/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months			
22	**Chilipepper rockfish**						
23	40°10' - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow & chilipepper limits -- See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							TABLE 2 (South)
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months			
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months[7/]	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[6/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Longnose skate**	Unlimited						
42	**Other fish**[7/]	Unlimited						

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December: 1,100 lb per week, not to exceed 4,400 lb/2 months.

4/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish south of 36° N. lat. from January through December: 1,930 lb per week.

5/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

20. In § 660.330, paragraph (c) is revised to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(c) *Sorting requirements.*

(1) In addition to the requirements at § 660.12(a)(8) the States of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipts.

(2) For open access vessels, the following species must be sorted:

(i) Coastwide—widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, longnose skate, other fish, Pacific whiting, and Pacific sanddabs;

(ii) North of 40°10′ N. lat.—POP, yellowtail rockfish, cabezon (Oregon and California);

(iii) South of 40°10′ N. lat.—minor shallow nearshore rockfish, minor deeper nearshore rockfish, chilipepper, bocaccio, splitnose rockfish, cowcod, bronzespotted rockfish, blackgill rockfish and cabezon.

* * * * *

21. In § 660.332, paragraphs (a) and (b) are revised to read as follows:

§ 660.332 Open access daily trip limit (DTL) fishery for sablefish.

(a) *Open access DTL fisheries both north and south of 36° N. lat.* Open access vessels may fish in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the routine management measures imposed under § 660.60.

(b) *Trip limits.*

(1) Daily and/or weekly trip limits for the open access fishery north and south of 36° N. lat. are provided in Tables 3 (North) and 3 (South) of this subpart.

(2) Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season under § 660.60.

(3) Trip and/or size limits to protect juvenile sablefish in the limited entry or open access fisheries also may be imposed at any time under § 660.60.

(4) Trip limits may be imposed in the open access fishery at any time under § 660.60.

22. Tables 3 (North) and 3 (South), to subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 43°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	43°00' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
4	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]					
See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.							
5	**Minor slope rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
6	**Pacific ocean perch**	100 lb/ month					
7	**Sablefish**	300 lb/ day, or 1 landing per week of up to 610 lb, not to exceed 1,220 lb/ 2 months[3/]					
8	**Thornyheads**	CLOSED					
9	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[4/]**						
15	**Whiting**	300 lb/ month					
16	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black rockfish**						
20	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]					
21	42° - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish					
22	**Lingcod[6/]**	CLOSED		400 lb/ month			CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited					
26	**Other Fish[7/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
27	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish except for yellowtail rockfish and lingcod, as described below)*						
28	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
29	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
30	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) con't

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December: 300 lb per day, or 1 landing per week of up to 675 lb, not to exceed 1,350 lb/2 months

4/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

5/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table 01012013

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 610 lb, not to exceed 1,220 lb/ 2 months[3/]					
7	South of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 1,460 lb, not to exceed 2,920 lb/ 2 months[4/]					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Starry flounder**						
16	**Other flatfish[5/]**						
17	**Whiting**	300 lb/ month					
18	**Minor shelf rockfish[2/], Shortbelly, Widow & Chilipepper rockfish**						
19	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**						
26	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			

TABLE 3 (South)

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor nearshore rockfish & Black rockfish**						
29	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore						
31	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		
32	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[6/]	CLOSED		400 lb/ month			CLOSED
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other Fish**[7/]	Unlimited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
41	*40° 10' - 38° N. lat.*	*100 fm line - 200 fm line* [6/]		*100 fm line*[5/] *- 150 fm line*[5/]			*100 fm line*[5/] *- 200 fm line*[5/ 6/]
42	*38° - 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/]					
43	*South of 34° 27' N. lat.*	*100 fm line*[5/] *- 150 fm line*[5/] *along the mainland coast; shoreline - 150 fm line*[5/] *around islands*					
44		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
46	South	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (South) con't

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish north of 36° N. lat. from January through December: 300 lb per day, or 1 landing per week of up to 675 lb, not to exceed 1,350 lb/2 months

4/ Beginning on January 1, 2014, the following trip limits are in effect for sablefish south of 36° N. lat. from January through December: 300 lb per day, or 1 landing per week of up to 1,525 lb, not to exceed 3,050 lb/2 months

5/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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23. In § 660.360, paragraphs (c)(1)(iv)(A) and (B), (c)(3) introductory text, (c)(3)(i)(A)(*1*), and (*2*), (c)(3)(i)(B), (c)(3)(ii)(A)(*1*) and (*2*), (c)(3)(ii)(B) through (D), (c)(3)(iii)(A)(*1*) and (*2*),

(c)(3)(v)(A)(*1*) through (*3*) are revised to read as follows:

§ 660.360 Recreational fishery-management measures.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) Between the U.S./Canada border and 48°10′ N. lat. (Cape Alava) (Washington Marine Area 4), recreational fishing for lingcod is open, for 2013, from April 16 through October 12, and for 2014, from April 16 through October 15. Lingcod may be no smaller than 24 inches (61 cm) total length.

(B) Between 48°10′ N. lat. (Cape Alava) and 46°16′ N. lat. (Washington/Oregon border) (Washington Marine Areas 1–3), recreational fishing for lingcod is open for 2013, from March 16 through October 12, and for 2014, from March 15 through October 18. Lingcod may be no smaller than 22 inches (56 cm) total length.

* * * * *

(c) * * *

(3) *California.* Seaward of California, California law provides that, in times and areas when the recreational fishery is open, there is a 20 fish bag limit for all species of finfish, within which no more than 10 fish of any one species may be taken or possessed by any one person. [**Note:** There are some exceptions to this rule. The following groundfish species are not subject to a bag limit: Petrale sole, Pacific sanddab and starry flounder.] For groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish and the depth restrictions at paragraph (c)(3)(i) of this section. Recreational spearfishing for all federally-managed groundfish, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for the following state-managed species: Ocean whitefish, California sheephead, and all greenlings of the genus Hexagrammos. Kelp greenling is the only federally-managed greenling. Retention of cowcod, yelloweye rockfish, bronzespotted rockfish, and canary rockfish is prohibited in the recreational fishery seaward of California all year in all areas. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

* * * * *

(i) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (Northern Management Area), recreational fishing for all groundfish (except ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through October 31 (shoreward of 20 fm is open); and is closed entirely from January 1 through May 14 and from November 1 through December 31.

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for all groundfish (except ''other flatfish'' as specified in paragraph (c)(3)(iv) of this section) is prohibited seaward of the 20 fm (37 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15, 2013 through September 2, 2013 (shoreward of 20 fm is open), and is closed entirely from January 1, 2013 through May 14, 2013 and from September 3, 2013 through December 31, 2013; Recreational fishing for groundfish is prohibited seaward of 20 fm (37 m) and from May 15, 2014 through September 1, 2014 (shoreward of 20 fm is open); and is closed entirely from January 1, 2014 through May 14, 2014 and from September 2, 2014 through December 31, 2014.

* * * * *

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70. In general, recreational fishing for all groundfish is prohibited within the CCAs, except that fishing for ''other flatfish'' is permitted within the CCAs as specified in paragraph (c)(3)(iv) of this section. However, recreational fishing for the following species is permitted shoreward of the 20 fm (37 m) depth contour when the season for those species is open south of 34°27′ N. lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, California scorpionfish, shelf rockfish and ''other flatfish'' (subject to gear requirements at paragraph (c)(3)(iv) of this section during January–February). Retention of canary rockfish, yelloweye rockfish, bronzespotted rockfish and cowcod is prohibited within the CCA. [NOTE: California state regulations also permit recreational fishing for California sheephead, ocean whitefish, and all greenlings of the genus Hexagrammos shoreward of the 20 fm (37 m) depth contour in the CCAs when the season for the RCG complex is open south of 34°27′ N. lat.] It is unlawful to take and retain, possess, or land groundfish within the CCAs, except for species authorized in this section.

* * * * *

(ii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (North Management Area), recreational fishing for the RCG complex is open from May 15 through October 31 (i.e., it's closed from January 1 through May 14 and from November 1 through December 31.

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 15, 2013 through September 2, 2013 (i.e., it's closed from January 1 through May 14 and September 3 through December 31 in 2013), and from May 15, 2014 through September 1, 2014 (i.e., it's closed from January 1 through May 14 and September 2 through December 31 in 2014).

* * * * *

(B) *Bag limits, hook limits.* In times and areas when the recreational season for the RCG Complex is open, there is a limit of 2 hooks and 1 line when fishing for the RCG complex and lingcod. The bag limit is 10 RCG Complex fish per day coastwide. Retention of canary rockfish, yelloweye rockfish, bronzespotted rockfish and cowcod is prohibited. Within the 10 RCG Complex fish per day limit, no more than 3 may be bocaccio and no more than 3 may be cabezon. Multi-day limits are authorized by a valid permit issued by California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(C) *Size limits.* The following size limits apply: Cabezon may be no smaller than 15 in (38 cm) total length; and kelp and other greenling may be no smaller than 12 in (30 cm) total length.

(D) *Dressing/filleting.* Cabezon, kelp greenling, and rock greenling taken in the recreational fishery may not be filleted at sea. Rockfish skin may not be removed when filleting or otherwise dressing rockfish taken in the recreational fishery. The following rockfish filet size limits apply: Brown-skinned rockfish fillets may be no smaller than 6.5 in (16.6 cm). ''Brown-skinned'' rockfish include the following species: Brown, calico, copper, gopher, kelp, olive, speckled, squarespot, and yellowtail.

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N. lat. (California/Oregon border) and 40°10′ N. lat. (Northern Management Area), recreational fishing for lingcod is open from May 15 through October 31 (i.e., it's closed from January 1 through May 14 and from November 1 through December 31).

(*2*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 15, 2013 through September 2, 2013 (i.e., it's closed from January 1 through May 14 and September 3 through December 31 in 2013) and from May 15, 2014 through September 1, 2014 (i.e., it's closed from January 1 through May 14 and September 2 through December 31 in 2014).

* * * * *

(v) * * *

(A) * * *

(*1*) Between 40°10′ N. lat. and 38°57.50′ N. lat. (Mendocino Management Area), recreational fishing for California scorpionfish is open from May 15 through September 2, 2013 (i.e., it's closed from January 1 through May 14 and from September 3 through December 31, in 2013), and from May 15, 2014 through September 1, 2014 (i.e., it's closed from January 1 through May 14 and September 2 through December 31 in 2014).

(*2*) Between 38°57.50′ N. lat. and 37°11′ N. lat. (San Francisco Management Area), recreational fishing for California scorpionfish is open from June 1 through December 31 (i.e., it's closed from January 1 through May 31).

(*3*) Between 37°11′ N. lat. and 34°27′ N. lat. (Central Management Area), recreational fishing for California scorpionfish is open from May 1 through December 31 (i.e., it's closed from January 1 through April 30).

* * * * *

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